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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2007

BEGINNING OF TERM

OCTOBER 1, 2007, THROUGH APRIL 14, 2008

FRANK D. WAGNER

REPORTER OF DECISIONS

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
JOHN PAUL STEVENS, ASSOCIATE JUSTICE.
ANTONIN SCALIA, ASSOCIATE JUSTICE.
ANTHONY M. KENNEDY, ASSOCIATE JUSTICE.
DAVID H. SOUTER, ASSOCIATE JUSTICE.
CLARENCE THOMAS, ASSOCIATE JUSTICE.
RUTH BADER GINSBURG, ASSOCIATE JUSTICE.
STEPHEN BREYER, ASSOCIATE JUSTICE.
SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE.

RETIRED

SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE.

OFFICERS OF THE COURT

PETER D. KEISLER, ACTING ATTORNEY GENERAL.[1]
MICHAEL B. MUKASEY, ATTORNEY GENERAL.[2]
PAUL D. CLEMENT, SOLICITOR GENERAL.
WILLIAM K. SUTER, CLERK.
FRANK D. WAGNER, REPORTER OF DECISIONS.
PAMELA TALKIN, MARSHAL.
JUDITH A. GASKELL, LIBRARIAN.

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[1] Acting Attorney General Keisler resigned effective November 9, 2007.

[2] The Honorable Michael B. Mukasey, of New York, was nominated by President Bush on September 21, 2007, to be Attorney General; the nomination was confirmed by the Senate on November 8, 2007; he was commissioned on November 9, 2007, and took the oath of office on the same date. He was presented to the Court on December 3, 2007. See *post*, p. v.

SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective February 1, 2006, viz.:

For the District of Columbia Circuit, JOHN G. ROBERTS, JR., Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, JOHN G. ROBERTS, JR., Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, SAMUEL A. ALITO, JR., Associate Justice.

For the Ninth Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Tenth Circuit, STEPHEN BREYER, Associate Justice.

For the Eleventh Circuit, CLARENCE THOMAS, Associate Justice.

For the Federal Circuit, JOHN G. ROBERTS, JR., Chief Justice.

February 1, 2006.

(For next previous allotment, see 546 U. S., p. v.)

PRESENTATION OF THE ATTORNEY GENERAL

SUPREME COURT OF THE UNITED STATES

MONDAY, DECMBER 3, 2007

Present: CHIEF JUSTICE ROBERTS, JUSTICE STEVENS, JUSTICE SCALIA, JUSTICE KENNEDY, JUSTICE SOUTER, JUSTICE THOMAS, JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE ALITO.

THE CHIEF JUSTICE said:

The Court now recognizes the Solicitor General of the United States.

Solicitor General Clement said:

MR. CHIEF JUSTICE, and may it please the Court. I have the honor to present to the Court the eighty-first Attorney General of the United States, the Honorable Michael B. Mukasey of New York.

THE CHIEF JUSTICE said:

General Mukasey, on behalf of the Court, I welcome you as the chief law officer of the United States Government and as an officer of this Court. We welcome you to the performance of your very important duties that will rest upon you by virtue of your office. Your commission as Attorney General of the United States will be placed in the records of the Court, and we wish you well in your new office.

Attorney General Mukasey said:

Thank you, MR. CHIEF JUSTICE.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2007

BOARD OF EDUCATION OF CITY SCHOOL DISTRICT OF CITY OF NEW YORK *v.* TOM F., ON BEHALF OF GILBERT F., A MINOR CHILD

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 06–637. Argued October 1, 2007—Decided October 10, 2007

193 Fed. Appx. 26, affirmed by an equally divided Court.

Leonard J. Koerner argued the cause for petitioner. With him on the briefs were *Michael A. Cardozo*, *Edward F. X. Hart*, and *Drake A. Colley*.

Paul G. Gardephe argued the cause for respondent. With him on the brief were *Carrie A. Syme* and *Alexis Gander Deise*.

Deputy Solicitor General Garre argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Kim*, *Jonathan L. Marcus*, *Diana K. Flynn*, *Lisa J. Stark*, and *Kent D. Talbert*.*

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*Briefs of *amici curiae* urging reversal were filed for the Council of the Great City Schools et al. by *Julie Wright Halbert* and *Pammela Quinn*; for the National School Boards Association et al. by *Maree F. Sneed*, *John W. Borkowski*, *Audrey J. Anderson*, *Catherine E. Stetson*, *Jessica L. Ells-*

PER CURIAM.

The judgment is affirmed by an equally divided Court.

JUSTICE KENNEDY took no part in the decision of this case.

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worth, *Francisco M. Negrón, Jr.*, and *Naomi Gittins;* for the New York State School Boards Association by *Jay Worona* and *Pilar Sokol;* and for the U. S. Conference of Mayors et al. by *Richard Ruda* and *Donald B. Ayer.*

Briefs of *amici curiae* urging affirmance were filed for Agudath Israel of America by *David Zwiebel;* for Autism Speaks by *Robert H. Pees* and *Gary S. Mayerson;* for the Council of Parent Attorneys and Advocates et al. by *Ankur J. Goel;* for the International Dyslexia Association, Inc., et al. by *Paul M. Smith;* and for the National Disability Rights Network et al. by *Beth S. Brinkmann*, *Seth M. Galanter*, and *Linda A. Arnsbarger.*

Syllabus

ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS *v.* SIEBERT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 06–1680. Decided November 5, 2007

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) tolls its 1-year statute of limitations for filing a federal habeas petition while "a properly filed application for State post-conviction or other collateral review . . . is pending." 28 U. S. C. §2244(d)(2). Here, the District Court dismissed respondent Siebert's petition as untimely, reasoning that, because his state postconviction relief petition had been rejected on statute-of-limitations grounds, the state petition was not "properly filed" for AEDPA tolling purposes. The Eleventh Circuit reversed and remanded, holding that the state petition was "properly filed" because the state time bar was not jurisdictional. The District Court again dismissed the petition as untimely, relying on the holding in *Pace* v. *DiGuglielmo*, 544 U. S. 408, that a state postconviction petition rejected as untimely is not "properly filed" under AEDPA. Reversing, the Eleventh Circuit found that the state procedural rule here, unlike the jurisdictional time bar in *Pace*, operates as an affirmative defense.

Held: Because Siebert's state petition was untimely, it was not properly filed under AEDPA, and his federal petition was not entitled to tolling. The Eleventh Circuit's carveout of time limits operating as affirmative defenses is inconsistent with *Pace*, which was based not upon the jurisdictional nature of the time limit, but rather upon the distinction between petitions rejected based on filing conditions, which are not properly filed, and those rejected based on procedural bars that go to the ability to obtain relief, which are. Whether a time limit is jurisdictional, an affirmative defense, or something in between, it is a "condition to filing." *Artuz* v. *Bennett*, 531 U. S. 4, 9. Excluding from *Pace*'s scope those time limits that operate as affirmative defenses would leave a gaping hole in what was meant to be a general rule, as statutes of limitations are often affirmative defenses. What is more, whether a time limit is jurisdictional or an affirmative defense is often a disputed question. *Pace* precludes an approach that would have federal habeas courts delving into the intricacies of state procedural law in deciding whether a postconviction petition rejected by the state courts as untimely was nonetheless "properly filed" under AEDPA.

Certiorari granted; 480 F. 3d 1089, reversed and remanded.

PER CURIAM.

Daniel Siebert was convicted and sentenced to death in the State of Alabama for the murder of Linda Jarman. Siebert's conviction and sentence were affirmed on direct appeal, and the certificate of judgment issued on May 22, 1990. This Court denied certiorari on November 5, 1990. *Siebert* v. *Alabama*, 498 U. S. 963. On August 25, 1992, Siebert filed a petition for postconviction relief in Alabama state court. The state courts denied the petition as untimely, however, because it was filed approximately three months after the expiration of the then-applicable 2-year statute of limitations, Ala. Rule Crim. Proc. 32.2(c) (2000–2001), which began to run from the date the certificate of judgment issued.* The Alabama Supreme Court denied certiorari on September 15, 2000. Siebert did not seek review in this Court. On September 14, 2001, Siebert filed a petition for a federal writ of habeas corpus, see 28 U. S. C. §2254, in the District Court for the Northern District of Alabama.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) established a 1-year statute of limitations for filing a federal habeas petition. §2244(d)(1). The limitations period is tolled, however, while "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." §2244(d)(2). Because Siebert's direct appeal became final before AEDPA became effective, the 1-year limitations period began to run from April 24, 1996, AEDPA's effective date. See *Carey* v. *Saffold*, 536 U. S. 214, 217 (2002). Thus,

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*At the time Siebert's petition was before the Alabama courts, Rule 32.2(c) provided that "the court shall not entertain any petition," with certain exceptions not applicable here, "unless the petition is filed . . . within two (2) years after the issuance of the certificate of judgment by the Court of Criminal Appeals." The Rule has since been amended to provide for a 1-year limitations period, but is otherwise unchanged. See Ala. Rule Crim. Proc. 32.2(c) (2007–2008).

absent tolling, Siebert's federal habeas petition would be untimely by over four years.

The District Court dismissed Siebert's habeas petition as untimely, reasoning that an application for state postconviction relief is not "properly filed" if it was rejected by the state court on statute-of-limitations grounds. The Court of Appeals reversed, however, holding that Siebert's state postconviction petition was "properly filed" within the meaning of §2244(d)(2), because the state time bar was not jurisdictional and the Alabama courts therefore had discretion in enforcing it. See *Siebert* v. *Campbell*, 334 F. 3d 1018, 1030 (CA11 2003) *(per curiam)*. The Court of Appeals accordingly remanded to the District Court to consider the merits of Siebert's petition.

While Siebert's habeas petition was pending on remand in the District Court, we decided *Pace* v. *DiGuglielmo*, 544 U. S. 408 (2005). In *Pace*, we held that a state postconviction petition rejected by the state court as untimely is not "properly filed" within the meaning of §2244(d)(2). *Id.*, at 414, 417. Relying on *Pace*, the District Court again found that Siebert's state postconviction petition was not "properly filed," and dismissed his federal habeas petition as untimely. The Court of Appeals, however, reversed and remanded. In a one-paragraph opinion, the court distinguished *Pace* on the ground that Rule 32.2(c), unlike the statute of limitations at issue in *Pace*, "operate[s] as an affirmative defense." 480 F. 3d 1089, 1090 (CA11 2007). Thus, the court found its prior holding—that Siebert's state postconviction petition was "properly filed" because the state court rejected it on a nonjurisdictional ground—stood as the law of the case. *Ibid.*

The Court of Appeals' carveout of time limits that operate as affirmative defenses is inconsistent with our holding in *Pace*. Although the Pennsylvania statute of limitations at issue in *Pace* happens to have been a jurisdictional time bar under state law, see *Commonwealth* v. *Banks*, 556 Pa. 1, 5–6,

726 A. 2d 374, 376 (1999), the jurisdictional nature of the time limit was not the basis for our decision. Rather, we built upon a distinction that we had earlier articulated in *Artuz* v. *Bennett*, 531 U. S. 4 (2000), between postconviction petitions rejected on the basis of "'filing' conditions," which are not "properly filed" under § 2244(d)(2), and those rejected on the basis of "procedural bars [that] go to the ability to obtain relief," which are. *Pace*, *supra*, at 417 (citing *Artuz*, *supra*, at 10–11). We found that statutes of limitations are "filing" conditions because they "go to the very initiation of a petition and a court's ability to consider that petition." *Pace*, 544 U. S., at 417. Thus, we held "that time limits, *no matter their form*, are 'filing' conditions," and that a state postconviction petition is therefore not "properly filed" if it was rejected by the state court as untimely. *Ibid.* (emphasis added).

In short, our holding in *Pace* turned not on the nature of the particular time limit relied upon by the state court, but rather on the fact that time limits generally establish "conditions to filing" a petition for state postconviction relief. Whether a time limit is jurisdictional, an affirmative defense, or something in between, it is a "condition to filing," *Artuz*, *supra*, at 9—it places a limit on how long a prisoner can wait before filing a postconviction petition. The fact that Alabama's Rule 32.2(c) is an affirmative defense that can be waived (or is subject to equitable tolling) renders it no less a "filing" requirement than a jurisdictional time bar would be; it only makes it a less stringent one. Indeed, in *Pace* we cited the very statute at issue in this case as an example of such a "filing" requirement. See 544 U. S., at 417, n. 7 (citing Ala. Rule Crim. Proc. 32.2(c) (2004–2005)).

Excluding from *Pace*'s scope those time limits that operate as affirmative defenses would leave a gaping hole in what we plainly meant to be a general rule, as statutes of limitations are often affirmative defenses. See, *e. g.*, Fed. Rule Civ.

Proc. 8(c); *Kirkland* v. *State*, 143 Idaho 544, 546, 149 P. 3d 819, 821 (2006) ("The statute of limitations for petitions for post-conviction relief is not jurisdictional. It 'is an affirmative defense that may be waived if it is not pleaded by the defendant'" (quoting *Cole* v. *State*, 135 Idaho 107, 110, 15 P. 3d 820, 823 (2000); citation omitted)); *People* v. *Boclair*, 202 Ill. 2d 89, 101, 789 N. E. 2d 734, 742 (2002) (holding that time bar for filing postconviction petition is "an affirmative defense and can be raised, waived, or forfeited, by the State"). What is more, whether a time limit is jurisdictional or an affirmative defense is often a disputed question, as the interpretive history of Rule 32.2(c) itself illustrates, see *Ex parte Ward*, 46 So. 3d 888, 894 (2007) (noting confusion in the Alabama lower courts over whether Rule 32.2(c) is jurisdictional). Under the Court of Appeals' approach, federal habeas courts would have to delve into the intricacies of state procedural law in deciding whether a postconviction petition rejected by the state courts as untimely was nonetheless "properly filed" under §2244(d)(2). Our decision in *Pace* precludes such an approach.

We therefore reiterate now what we held in *Pace:* "When a postconviction petition is untimely under state law, 'that [is] the end of the matter' for purposes of §2244(d)(2)." 544 U. S., at 414 (quoting *Carey*, 536 U. S., at 226; alteration in original). Because Siebert's petition for state postconviction relief was rejected as untimely by the Alabama courts, it was not "properly filed" under §2244(d)(2). Accordingly, he was not entitled to tolling of AEDPA's 1-year statute of limitations.

The petition for certiorari is granted. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, dissenting.

There is an obvious distinction between time limits that go to the very initiation of a petition, and time limits that create an affirmative defense that can be waived. Compare the majority and dissenting opinions in *John R. Sand & Gravel Co.* v. *United States*, 457 F. 3d 1345 (CA Fed. 2006), cert. granted, 550 U. S. 968 (2007). The time limit under consideration in *Pace* v. *DiGuglielmo*, 544 U. S. 408 (2005), was of the former kind—as the Court's opinion expressly noted. See *id.*, at 417 (discussing "time limits, which go to the very initiation of a petition and a court's ability to consider that petition"). The time limit at issue in this case is of the latter, distinguishable kind—as the Court of Appeals correctly stated. 480 F. 3d 1089, 1090 (CA11 2007) (holding that *Pace* did not address statutory tolling for "a statute of limitations that operated as an affirmative defense").

It is true that there is language in the majority opinion in *Pace* that is broad enough to cover both kinds of limitations provisions, but only the former (those that do not operate as affirmative defenses) can even arguably provide a reasonable basis for concluding that an untimely petition has not been "properly filed" within the meaning of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214.* I therefore respectfully dissent.

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*I continue to believe, as stated in my dissent in *Pace*, 544 U. S., at 427, that state timeliness bars that operate like procedural bars (for example, those that require the courts to consider enumerated exceptions) should not determine whether a state postconviction petition is "properly filed" under AEDPA. Even accepting *Pace*, however, this case is distinguishable and should not be summarily reversed.

Syllabus

CSX TRANSPORTATION, INC. *v.* GEORGIA STATE BOARD OF EQUALIZATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 06–1287. Argued November 5, 2007—Decided December 4, 2007

Under Georgia law, most commercial and industrial property is valued locally by county boards for tax purposes, but public utilities such as petitioner railroad (CSX) are initially valued by the State. In 2002, respondent Georgia state board used a different combination of methodologies than it had in 2001 to determine that the market value of CSX's in-state real property had increased 47 percent, resulting in a significantly higher ad valorem tax levy. CSX filed suit under the Railroad Revitalization and Regulatory Reform Act of 1976 (4–R Act or Act), which bars States from, *inter alia*, "[a]ssess[ing] rail transportation property at a value that has a higher ratio to the [property's] true market value . . . than the ratio" between the assessed and true market values of other commercial and industrial property in the same taxing jurisdiction, 49 U. S. C. § 11501(b)(1), and authorizes the federal district court to enjoin the tax if the railroad ratio exceeds the ratio for other property by at least five percent, § 11501(c). CSX alleged that Georgia had grossly overestimated the market value of its in-state rail property while accurately valuing other commercial and industrial property in the State, so that CSX's property was taxed at a ratio of assessed-to-market value considerably more than 5 percent greater than the same ratio for the other in-state property. Ruling that Georgia had not discriminated against CSX in violation of the 4–R Act because the State had used widely accepted valuation methods to arrive at its 2002 estimate of true market value, the District Court declared that the Act does not allow a railroad to challenge a State's chosen methodology if it is rational and not motivated by discriminatory intent. The Eleventh Circuit panel affirmed, reasoning that the Act does not clearly state that railroads may challenge valuation methodologies, and that such a clear statement was required in light of the intrusion on state taxing prerogatives.

Held: The 4–R Act allows a railroad to attempt to show that state methods for determining the value of railroad property result in a discriminatory determination of true market value. Pp. 16–22.

(a) The Act's language is clear. States may not tax railroad property at a ratio of assessed-to-true-market value higher than the ratio for

other commercial and industrial property in the same jurisdiction. To apply the Act, district courts must calculate the true market value of in-state railroad property. A court cannot undertake the comparison of ratios the statute requires without that figure at hand, see *Burlington Northern R. Co.* v. *Oklahoma Tax Comm'n*, 481 U. S. 454, 461, and the determination of true market value may be affected by the State's choice of valuation methods. Georgia's argument that valuation methodologies must be distinguished from their application, and that the Act allows courts to question only the latter, is rejected. There is no distinction between method and application in the Act's language and no passage limiting district court factfinding as the State proposes. Georgia's position is untenable given the way market value is calculated. Valuation is not a matter of mathematics, but an applied science, even a craft. Most appraisers estimate market value by employing not one methodology but a combination because no one approach is entirely accurate, at least in the absence of an established market for the type of property at issue. The individual methods yield sometimes more, sometimes less reliable results depending on the peculiar features of the property evaluated. Given the extent to which the chosen methods can affect the determination of value, preventing courts from scrutinizing state valuation methodologies would render §11501 a largely empty command, forcing district courts to accept as "true" the market-value estimate of the State, one of the parties to the litigation. States, in turn, would be free to employ appraisal techniques that routinely overestimate the market worth of railroad assets. By then levying taxes based on those overestimates, States could implement the very discriminatory taxation Congress sought to eradicate. Courts would be powerless to stop them, and the Act would ultimately guarantee railroads nothing more than mathematically accurate discriminatory taxation.

The State's warning that allowing railroads to introduce their own valuation estimates based on different methodologies will inevitably lead to a futile clash of experts, which courts will have no reasonable way to settle, is not compelling, given that Congress was not similarly troubled. Rather, Congress directed courts to find true market value, however elusive, making that value the objective benchmark for courts' evaluation. Property valuation, though admittedly complex, is at bottom just "an issue of fact about possible market prices," *Suitum* v. *Tahoe Regional Planning Agency*, 520 U. S. 725, 741, an issue district courts are used to addressing. In light of the statute's directive making true market value a factual question to be determined by the district court, what Georgia really seeks is to limit the types of evidence courts may consider as part of their factual inquiry. Had Congress intended to impose such a limit, it could easily have included language insulating

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the State's chosen methodologies from judicial scrutiny. It did not. Pp. 16–19.

(b) The State argues that any interpretation of the Act allowing courts to question state valuation methods ignores the background principles of federalism against which the statute was enacted. Even if important state policy questions are intertwined with the selection of a valuation methodology, however, Congress clearly permitted courts to question such methodologies when it banned discriminatory assessment ratios and made true market value a question to be litigated in federal court. *Department of Revenue of Ore.* v. *ACF Industries, Inc.*, 510 U. S. 332, 343–344, distinguished. The Court also disagrees with Georgia's claim that the Court's interpretation will destroy the States' discretion to choose their own valuation methodologies. A State may use whatever method it likes, so long as the result is not discriminatory in violation of the Act. Pp. 20–22.

472 F. 3d 1281, reversed.

ROBERTS, C. J., delivered the opinion for a unanimous Court.

Carter G. Phillips argued the cause for petitioner. With him on the briefs were *Stephen B. Kinnaird*, *Ileana M. Ciobanu*, *Matthew J. Warren*, *James W. McBride*, *Ellen M. Fitzsimmons*, *David J. Bowling*, and *Peter J. Shudtz*.

Douglas Hallward-Driemeier argued the cause for the United States as *amicus curiae* in support of petitioner. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Hungar*, *Anthony J. Steinmeyer*, *Robert D. Kamenshine*, and *Ellen D. Hanson*.

Warren R. Calvert, Senior Assistant Attorney General of Georgia, argued the cause for respondents. With him on the brief were *Thurbert E. Baker*, Attorney General, *R. O. Lerer*, Deputy Attorney General, *Peter J. Crossett*, and *John D. Cook*.*

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*Briefs of *amici curiae* urging reversal were filed for the Association of American Railroads by *Betty Jo Christian*, *Timothy M. Walsh*, and *Michael A. Vatis*; for the Council on State Taxation by *Stephen P. Kranz* and *Douglas L. Lindholm*; and for the Tax Foundation by *Brian E. Bailey*.

Sheldon H. Laskin filed a brief for the Multistate Tax Commission as *amicus curiae*.

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Railroad Revitalization and Regulatory Reform Act of 1976 prohibits States from discriminating against railroads by taxing railroad property more heavily than other commercial property in the State. Two decades ago, we held that this statute permits an aggrieved railroad to challenge a State's valuation of its property for tax purposes. *Burlington Northern R. Co.* v. *Oklahoma Tax Comm'n*, 481 U. S. 454, 462 (1987). Because the railroad in that case challenged only the State's *application* of its valuation methods, we expressly reserved the question whether a railroad may challenge the State's methods themselves. We answer that question today, and hold that railroads may challenge state methods for determining the value of railroad property, as well as how those methods are applied. The statute provides for nothing less.

I

Congress enacted the Railroad Revitalization and Regulatory Reform Act in 1976. 90 Stat. 31.[1] Called the "4–R Act" for brevity, the law aimed to halt the economic decline of the rail industry by, among other means, barring "discriminatory state taxation of railroad property." *Burlington Northern*, *supra*, at 457; see also *Department of Revenue of Ore.* v. *ACF Industries, Inc.*, 510 U. S. 332, 336 (1994). The 4–R Act prohibits four separate forms of discriminatory state taxation of railroads.[2] Only the first is at issue here:

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[1] The portion of the Act that concerns us here, § 306, was originally codified at 49 U. S. C. § 26c (1976 ed.). In 1978, Congress recodified it at 49 U. S. C. § 11503 (1976 ed., Supp. II). Congress recodified it again in 1995, without substantive change, this time as § 11501. For convenience, all references to the statute are to the text of § 11501.

[2] Section 11501 reads, in relevant part:

"(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

States, the Act provides, may not "[a]ssess rail transportation property at a value that has a higher ratio to the [property's] true market value . . . than the ratio" between the assessed and true market values of other commercial and industrial property in the same taxing jurisdiction. 49 U. S. C. § 11501(b)(1). If the railroad ratio exceeds the ratio for other property by at least five percent, the district court may enjoin the tax. § 11501(c).[3]

"(1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

"(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.

"(3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

"(4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part."

[3] Section 11501(c) provides:

"Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

"(1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation prop-

Petitioner CSX Transportation, Inc., is a freight rail carrier with multiple routes across the State of Georgia. As a consequence, it is subject to Georgia's ad valorem tax on real property. Under Georgia law, most commercial and industrial property is valued locally by county boards. Public utilities such as railroads, however, are initially valued by the State, which then certifies the proposed valuations to the county boards for adoption or alteration. In 2001, Georgia's State Board of Equalization, a respondent here, put CSX's ad valorem tax liability at $4.6 million. A year later, the State's appraiser used a different combination of methodologies to determine the market value of CSX's in-state property.[4] The result was a significantly higher tax levy. The State estimated the railroad's 2002 market value at approximately $7.8 billion, 472 F. 3d 1281, 1285 (CA11 2006), a 47 percent increase over the previous year. That brought the assessed value of CSX's Georgia property to $514.9 million, for a final property tax bill of $6.5 million. Brief for Petitioner 15.

CSX filed suit in the United States District Court for the Northern District of Georgia, contending that the State's 2002 tax assessment violated the 4–R Act. The railroad alleged that Georgia had grossly overestimated the market

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erty than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

"(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district."

[4]Georgia assesses public utilities using the "unit rule." Under this rule, "an appraiser first determines the value of all assets of an entity, regardless of location," then multiplies "by the percentage of the entity located within [the State] to determine what portion of the value of the company should be allocated to the state." 472 F. 3d 1281, 1283 (CA11 2006). The parties agree the unit rule is the appropriate rule for valuing CSX's property. There are, however, numerous methods available to value property under the unit rule, and many of these methods themselves have multiple variations. See *id.*, at 1284.

value of its in-state property while accurately valuing other commercial and industrial property in the State. The result, according to CSX, was that its rail property was taxed at a ratio of assessed-to-market value considerably more than five percent greater than the same ratio for the other property in the State.

To make its case, CSX submitted the testimony of its own expert appraiser, who relied on a combination of valuation methods different from those used by the appraiser for Georgia. The CSX appraiser calculated the 2002 market value of the railroad's property to be $6 billion, not the $7.8 billion figure used by the State. 472 F. 3d, at 1285–1286. CSX maintained that the state appraiser's valuation methodologies were flawed, and urged the District Court to accept the market value estimated by its expert as more accurate.

The District Court refused to do so. Following a bench trial, the court ruled Georgia had not discriminated against CSX in violation of the 4–R Act because the State had used widely accepted valuation methods to arrive at its estimate of true market value. 448 F. Supp. 2d 1330, 1341 (ND Ga. 2005). In the judgment of the District Court, the Act "does not generally allow a railroad to challenge the state's chosen methodology," as long as the State's methods are rational and not motivated by discriminatory intent. *Ibid.*

A divided panel of the Court of Appeals for the Eleventh Circuit affirmed. 472 F. 3d 1281. The majority reasoned that the "text of the Act does not clearly state that railroads may challenge valuation methodologies," and that such a clear statement was required in light of the intrusion on state taxing prerogatives. *Id.*, at 1289. Judge Fay dissented. *Id.*, at 1292. Recognizing the division on this question among the Circuits, compare *Consolidated Rail Corporation* v. *Hyde Park*, 47 F. 3d 473, 481–482 (CA2 1995) (a railroad may challenge a State's valuation methodology), and *Burlington Northern R. Co.* v. *Department of Revenue of Wash.*, 23 F. 3d 239, 240–241 (CA9 1994) (same), with *Chesa-*

peake Western R. Co. v. *Forst*, 938 F. 2d 528, 531 (CA4 1991) (a railroad may not challenge a State's valuation methodology), and 472 F. 3d, at 1289 (case below), we granted certiorari, 550 U. S. 968 (2007), and now reverse.

II

"[T]he language of § 1150[1] plainly declares the congressional purpose." *Burlington Northern*, 481 U. S., at 461. States may not tax railroad property at a ratio of assessed-to-true-market value higher than the ratio for other commercial and industrial property in the same jurisdiction. In order to apply the Act, district courts must calculate the true market value of in-state railroad property. A court cannot undertake the comparison of ratios the statute requires without that figure at hand. We said as much in *Burlington Northern*: "It is clear from [the Act's] language that in order to compare the actual assessment ratios, it is necessary to determine what the 'true market values' are." *Ibid.*

We do not see how a court can go about determining true market value if it may not look behind the State's choice of valuation methods. Georgia insists there is a clear and important distinction between valuation methodologies and their application. As the State would have it, the statute allows courts to question only the latter. We find no distinction between method and application in the language of the Act, and see no passage limiting district court factfinding in the manner the State proposes. The total lack of textual support for Georgia's position is not surprising. The dichotomy the State presses would eviscerate the statute by forcing courts to defer to the valuation estimate of the State, when discriminatory taxation by States was the very evil the Act aimed to ban.

Georgia's position is untenable given the way market value is calculated. Valuation is not a matter of mathematics, as if the district court could prevent discriminatory taxation

simply by doublechecking the State's assessment equations. Rather, the calculation of true market value is an applied science, even a craft. Most appraisers estimate market value by employing not one methodology but a combination. These various methods generate a range of possible market values which the appraiser uses to derive what he considers to be an accurate estimate of market value, based on careful scrutiny of all the data available. Appraisal Institute, The Appraisal of Real Estate 49–50 (12th ed. 2001).

Georgia's appraiser in the instant case, for example, used three different valuation techniques—the discounted cash-flow approach, a market multiple approach, and a stock and debt approach. He derived five values from these three methods, ranging from $8.126 billion to $12.346 billion. After selecting a number at the low end of the range and then subtracting another $400 million to account for intangible property not subject to ad valorem taxation, he settled on $7.8 billion as his final estimate of the true market value. 472 F. 3d, at 1284–1285.

Appraisers typically employ a combination of methods because no one approach is entirely accurate, at least in the absence of an established market for the type of property at issue. The individual methods yield sometimes more, sometimes less reliable results depending on the peculiar features of the property evaluated. As the variation in the state appraiser's market-value range reveals, different methods can produce substantially different estimates. W. Kinnard, Income Property Valuation: Principles and Techniques of Appraising Income-Producing Real Estate 52 (1971).

Given the extent to which the chosen methods can affect the determination of value, preventing courts from scrutinizing state valuation methodologies would render § 11501 a largely empty command. It would force district courts to accept as "true" the market value estimated by the State, one of the parties to the litigation. States, in turn, would

be free to employ appraisal techniques that routinely overestimate the market worth of railroad assets. By then levying taxes based on those overestimates, States could implement the very discriminatory taxation Congress sought to eradicate. On Georgia's reading of the statute, courts would be powerless to stop them, and the Act would ultimately guarantee railroads nothing more than mathematically accurate discriminatory taxation. We do not find this interpretation compelling. Instead, we agree with Judge Fay in dissent below: "Since the objective of any methodology is a determination of *true market value*, a railroad should be allowed to challenge the method[s] used [by the State] in an attempt to prove that the result . . . was not the *true market value* of its property." 472 F. 3d, at 1294.

The State agrees that it may not be possible to fix true market value with any precision. But it draws a different conclusion from this premise. Because any number of estimates are plausible, Georgia argues, the court is as likely to get an accurate result by verifying the application of the State's methods—so long as they are broadly reasonable—as it is by employing another method altogether. The State warns that allowing railroads to introduce their own valuation estimates based on different methodologies will inevitably lead to a futile clash of experts, which courts will have no reasonable way to settle. At least one of the Courts of Appeals shares this concern. See *Chesapeake Western*, 938 F. 2d, at 532 ("There is no absolute way to test the assertions of competing valuations . . . " (internal quotation marks and brackets omitted)).

Congress was not similarly troubled. It directed courts to find true market value, however elusive. It made that value the objective benchmark for courts' evaluation of state taxes on railroad property. True market value may well not be a single, precise number, but Congress obviously believed it was susceptible to judicial inquiry and that some approximations were better than others.

Georgia's grim prophecies notwithstanding, the inquiry the statute mandates is not unfamiliar to courts. Valuation of property, though admittedly complex, is at bottom just "an issue of fact about possible market prices," *Suitum* v. *Tahoe Regional Planning Agency*, 520 U. S. 725, 741 (1997), an issue district courts are used to addressing. Railroad property is not frequently sold, but "determinations of market value are routinely made in judicial proceedings without the benefit of a market transaction." *Id.*, at 742. The District Court in this case made clear that it knew how to find true market value: "In a more typical case, the court would look at both [the railroad expert's] appraisal and [the State's] appraisal to determine the true market value of [the railroad]." 448 F. Supp. 2d, at 1338, n. 8. It refused to do so not because true market value is inherently elusive, but because it believed the Act did not allow it to question the State's methods.

In light of the statute's directive making true market value a factual question to be determined by the district court, what Georgia is really asking for is a limitation on the types of evidence courts may consider as part of their factual inquiry. If Congress had wanted to impose such a limit by reserving to States the prerogative of selecting which valuation methods may be used, it surely could have done so. Out of deference to the States, for example, § 11501(c) provides that "[t]he burden of proof in determining . . . true market value [shall be] governed by State law." Congress could easily have included similar language insulating the State's chosen methodologies from judicial scrutiny. It did not. Like Oklahoma's argument in *Burlington Northern*, Georgia's position in this case ultimately "depends upon the addition of words to a statutory provision which is complete as it stands." 481 U. S., at 463. We decline to find distinctions in the statute where they do not exist, especially where, as here, those distinctions would thwart the law's operation.

III

Considering the clarity of the statute, we are tempted to leave the discussion at that. "When we find the terms of a statute unambiguous, judicial inquiry is complete . . . ." *Rubin* v. *United States*, 449 U. S. 424, 430 (1981). Georgia, however, lodges two objections to our interpretation, each of which merits a reply. First, the State argues that any interpretation of the Act allowing courts to question state valuation methods ignores the background principles of federalism against which the statute was enacted. The majority below expressed a similar concern. "The selection of a valuation methodology," it ruled, "is part of th[e] fundamental power of a state [to tax]," 472 F. 3d, at 1288, and should not be limited absent a clear statement from Congress. We have long held that the means States adopt to collect their taxes "should be interfered with as little as possible." *Dows* v. *Chicago*, 11 Wall. 108, 110 (1871). But we are persuaded that allowing railroads to challenge a State's valuation methodologies has been clearly authorized by the terms of the 4–R Act.

As an initial matter, we question Georgia's contention that its selection of valuation methodologies is an important state policy choice intimately connected to its tax power. Georgia does not prescribe any particular methodology as a matter of state law. Its appraisers use different methodologies in different combinations, as they see fit. See 472 F. 3d, at 1284–1285 (explaining that the state appraiser employed multiple methods and selected a value according to his best judgment). This suit, in fact, is the result of an individual appraiser's decision to employ a different combination of assessment techniques than that used by his immediate predecessors. The methods he selected were his choice, not the dictate of any state statute or regulation. *Ibid.*

But even if important questions of state policy are, as the Eleventh Circuit believed, "intertwined with the selection of a valuation methodology," *id.*, at 1288, judicial scrutiny of

those methodologies is authorized by the 4–R Act's clear command to find true market value. As we explained above, the power to calculate true market value necessarily includes the power to look behind a State's valuation methods. That the statute should vest this authority in the Nation's courts is hardly surprising, given Congress's conclusion that the States were assessing railroad property unfairly.

Our decision in *Department of Revenue of Ore.* v. *ACF Industries, Inc.*, 510 U. S. 332 (1994), is not to the contrary. That case concerned a different provision of the 4–R Act—namely, the command in §11501(b)(4) preventing a State from "[i]mpos[ing] another tax that discriminates against a rail carrier providing transportation" in the taxing jurisdiction. This bar on facially discriminatory taxes, we held, did not prevent a State from exempting certain nonrailroad property from otherwise generally applicable ad valorem taxes. *Id.*, at 343. At the time the 4–R Act was adopted, a majority of States exempted one or more classes of business property from ad valorem taxation, "including business inventories, raw materials used in textile manufacturing, . . . and mechanics tools," to name just a few. *Id.*, at 344. The States had provided such property tax exemptions for years. In the face of this widespread and historical practice, we declined to read the 4–R Act to prohibit a type of tax exemption the text did not expressly mention. *Ibid.*

By contrast, we pointedly noted that the Act "prohibit[s] discriminatory tax rates and assessment ratios in no uncertain terms . . . and set[s] forth precise standards for judicial scrutiny of challenged rate and assessment practices." *Id.*, at 343. Georgia's claim that court review of state valuation methodologies is not authorized by a clear statement in the Act ignores the statute's explicit prohibition of discriminatory assessment ratios. A district court cannot accurately calculate or compare those ratios without determining true market value. Congress clearly permitted courts to question state valuation methodologies when it banned discrimi-

natory assessment ratios and made true market value a question to be litigated in federal court.

Georgia also protests that our interpretation will destroy the States' discretion to choose their own valuation methodologies. We disagree. A State may use whatever method or methods it likes, so long as the result is not discriminatory. The Act does not prohibit the use of any valuation methodology. It prohibits discrimination. Far from requiring States to follow a particular method, we hold only that nothing in the statute prevents a railroad from attempting to show that the methods chosen by the State result in a discriminatory determination of true market value.

The judgment of the Court of Appeals for the Eleventh Circuit is reversed.

It is so ordered.

Syllabus

LOGAN *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 06–6911. Argued October 30, 2007—Decided December 4, 2007

Under federal law, the maximum prison term for a felon convicted of possessing a firearm is ordinarily ten years. See 18 U. S. C. §924(a)(2). If the offender's prior criminal record includes at least three convictions for "violent felon[ies,]" however, the Armed Career Criminal Act (ACCA) mandates a minimum term of 15 years. See §924(e)(1). Congress defined the term "violent felony" to include specified crimes "punishable by imprisonment for a term exceeding one year," §924(e)(2)(B), but also provided that a state-law misdemeanor may qualify as a "violent felony" if the offense is punishable by a term of more than two years, §921(a)(20)(B). Congress amended §921(a)(20) in 1986 to exclude from qualification for enhanced sentencing "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights [*i. e.*, rights to vote, hold office, and serve on a jury] restored."

Petitioner Logan pleaded guilty to being a felon in possession of a firearm and received a 15-year sentence, the mandatory minimum under ACCA. In imposing this sentence, the court took account of three Wisconsin misdemeanor battery convictions, each of them punishable by a 3-year maximum sentence, and none of them revoking any of Logan's civil rights. Logan challenged his sentence on the ground that his state-court convictions fell within §921(a)(20)'s "civil rights restored" exemption from ACCA's reach. Rights retained, Logan argued, should be treated the same as rights revoked but later restored. The District Court disagreed, holding that the exemption applies only to defendants whose civil rights were both lost and restored, and the Seventh Circuit affirmed.

Held: The exemption contained in §921(a)(20) does not cover the case of an offender who retained civil rights at all times, and whose legal status, postconviction, remained in all respects unaltered by any state dispensation. Pp. 30–37.

(a) The ordinary meaning of the word "restored"—giving back something that has been taken away—does not include retention of something never lost. Moreover, the context in which "restored" appears in §921(a)(20) counsels adherence to the word's ordinary meaning. In §921(a)(20), the words "civil rights restored" appear in the company of

"expunged," "set aside," and "pardoned." Each of those terms describes a measure by which the government relieves an offender of some or all of the consequences of his conviction. In contrast, a defendant who retains rights is simply left alone. He receives no status-altering dispensation, no token of forgiveness from the government. Pp. 30–32.

(b) Logan's dominant argument against a plain-meaning approach is not persuasive. He relies on the harsh result a literal reading could yield: Unless retention of rights is treated as legally equivalent to restoration of rights, he maintains, less serious offenders will be subject to ACCA's enhanced penalties while more serious offenders in the same State, who have had civil rights restored, may escape heightened punishment. Logan urges that this result is not merely anomalous; it is absurd, particularly in States where restoration of civil rights occurs automatically upon release from prison. P. 32.

Logan's harsh or absurd consequences argument overlooks §921(a)(20)'s "unless" clause, under which an offender gains no exemption from ACCA's application through an expungement, set-aside, pardon, or restoration of civil rights if the dispensation "expressly provides that the [offender] may not ship, transport, possess, or receive firearms." Many States that restore felons' civil rights (or accord another measure of forgiveness) nonetheless impose or retain firearms disabilities. Further, Wisconsin no longer punishes misdemeanors by more than two years' imprisonment, and thus no longer has any misdemeanors that qualify as ACCA predicates. Pp. 32–33.

The resolution Logan proposes, in any event, would correct one potential anomaly while creating others. Under Logan's proposed construction, all crimes, including first-degree murder, would be treated as crimes for which "civil rights [have been] restored" in a State that does not revoke any offender's civil rights, while less serious crimes committed elsewhere would not. Accepting Logan's argument would also undercut §921(a)(20)(B), which subjects to ACCA state misdemeanor convictions punishable by more than two years' imprisonment. Because misdemeanors generally entail no revocation of civil rights, reading the word "restored" to include "retained" would yield this curiosity: An offender would fall within ACCA's reach if his three prior offenses carried potential prison terms of over two years, but would be released from ACCA's grip by virtue of his retention of civil rights. This Court is disinclined to say that what Congress imposed with one hand (exposure to ACCA) it withdrew with the other (exemption from ACCA). Even assuming that when Congress revised §921(a)(20) in 1986, it labored under the misapprehension that all misdemeanants and felons at least temporarily forfeit civil rights, and indulging the further assumption that courts may repair such a congressional oversight or mistake,

this Court is not equipped to say what statutory alteration, if any, Congress would have made had its attention trained on offenders who retained civil rights; nor can the Court recast §921(a)(20) in Congress' stead. Pp. 33–35.

Section 922(g)(9)—which was adopted ten years after §921(a)(20) was given its current shape and which outlaws possession of a firearm by anyone "convicted . . . of a misdemeanor crime of domestic violence"—cautions against any assumption that Congress did not mean to deny the §921(a)(20) exemption to offenders who retained their civil rights. Tailored to §922(g)(9), Congress adopted a definitional provision, §921(a)(33)(B)(ii), corresponding to §921(a)(20), which specifies expungement, set-aside, pardon, or restoration of rights as dispensations that can cancel lingering effects of a conviction. That provision also demonstrates that the words "civil rights restored" do not cover a person whose civil rights were never taken away. It provides for restoration of civil rights as a qualifying dispensation only "if the law of the applicable jurisdiction provides for the loss of civil rights" in the first place. Section 921(a)(33)(B)(ii) also rebuts Logan's absurdity argument. Statutory terms may be interpreted against their literal meaning where the words could not conceivably have been intended to apply to the case at hand. See, *e. g.*, *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504, 511. In §921(a)(33)(B)(ii), however, Congress explicitly distinguished between "restored" and "retained," thereby making it more than conceivable that the Legislature, albeit an earlier one, meant to do the same in §921(a)(20). Pp. 35–37.

453 F. 3d 804, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court.

Richard A. Coad argued the cause for petitioner. With him on the briefs were *Brian T. Fahl* and *Jeffrey T. Green*.

Daryl Joseffer argued the cause for the United States. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Fisher*, *Deputy Solicitor General Dreeben*, and *Joel M. Gershowitz*.*

**Stephen P. Halbrook* filed a brief for the National Rifle Association of America, Inc., as *amicus curiae* urging reversal.

Elliot H. Scherker, *Julissa Rodriguez*, *Peter Goldberger*, *Mary Price*, and *Barbara E. Bergman* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae*.

JUSTICE GINSBURG delivered the opinion of the Court.

Petitioner James D. Logan pleaded guilty in a United States District Court to being a felon in possession of a firearm, in violation of 18 U. S. C. § 922(g)(1). Logan's record as a recidivist, which included three relevant state convictions, led the District Court to impose a 15-year prison term, the minimum sentence mandated by the Armed Career Criminal Act (ACCA), 18 U. S. C. § 924(e)(1) (2000 ed., Supp. V). For ACCA sentence-enhancement purposes, a prior conviction may be disregarded if the conviction "has been expunged, or set aside," or the offender "has been pardoned or has had civil rights restored." § 921(a)(20) (2000 ed.). None of Logan's prior convictions have been expunged or set aside. Nor has he been pardoned for any past crime. And, bearing importantly on the instant petition, the three state-court convictions that triggered Logan's ACCA-enhanced sentence occasioned no loss of civil rights.

Challenging his enhanced sentence, Logan presents this question: Does the "civil rights restored" exemption contained in § 921(a)(20) encompass, and therefore remove from ACCA's reach, state-court convictions that at no time deprived the offender of civil rights? We hold that the § 921(a)(20) exemption provision does not cover the case of an offender who retained civil rights at all times, and whose legal status, postconviction, remained in all respects unaltered by any state dispensation.

Section 921(a)(20) sets out postconviction events—expungement, set aside, pardon, or restoration of civil rights—that extend to an offender a measure of forgiveness, relieving him from some or all of the consequences of his conviction. Congress might have broadened the § 921(a)(20) exemption provision to cover convictions attended by no loss of civil rights. The national lawmakers, however, did not do so. Section 921(a)(20)'s failure to exempt convictions that do not revoke civil rights produces anomalies. But so does the extension of the § 921(a)(20) exemption that Logan advances.

We are not equipped to say what statutory alteration, if any, Congress would have made had its attention trained on offenders who retained civil rights; nor can we recast § 921(a)(20) in Congress' stead.

I

Federal law generally prohibits the possession of a firearm by a person convicted of "a crime punishable by imprisonment for a term exceeding one year." 18 U. S. C. § 922(g)(1). Ordinarily, the maximum felon-in-possession sentence is ten years. See § 924(a)(2). If the offender's prior criminal record includes at least three convictions for "violent felon[ies]" or "serious drug offense[s]," however, the maximum sentence increases to life, and ACCA mandates a minimum term of 15 years. § 924(e)(1) (2000 ed., Supp. V).

Congress defined the term "violent felony" to include specified crimes "punishable by imprisonment for a term exceeding one year." § 924(e)(2)(B) (2000 ed.). An offense classified by a State as a misdemeanor, however, may qualify as a "violent felony" for ACCA-enhancement purposes (or as a predicate for a felon-in-possession conviction under § 922(g)) only if the offense is punishable by more than two years in prison. § 921(a)(20)(B).

In *Dickerson* v. *New Banner Institute, Inc.*, 460 U. S. 103 (1983), we held that a State's expungement of a conviction did not nullify the conviction for purposes of the firearms disabilities Congress placed in §§ 922(g)(1) and (h)(1). In so ruling, we noted that our decision would ensure greater uniformity in federal sentences. See *id.*, at 119–120. Provisions for expungement "var[ied] widely from State to State," we observed, *id.*, at 120, and yielded "nothing less than a national patchwork," *id.*, at 122.

In the Firearms Owners' Protection Act (FOPA), 100 Stat. 449, Congress amended § 921(a)(20) in response to *Dickerson*'s holding that, for purposes of federal firearms disabilities, state law did not determine the present impact of a

prior conviction. The amended provision excludes from qualification as a "crime punishable by imprisonment for a term exceeding one year" (or a misdemeanor under state law punishable by more than two years in prison):

> "Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored . . . unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." 18 U. S. C. §921(a)(20).[1]

While §921(a)(20) does not define the term "civil rights," courts have held, and petitioner agrees, that the civil rights relevant under the above-quoted provision are the rights to vote, hold office, and serve on a jury. See Brief for Petitioner 13, n. 10; cf. *Caron* v. *United States*, 524 U. S. 308, 316 (1998).

II

On May 31, 2005, police officers responded to a domestic disturbance complaint made by Logan's girlfriend, Asenath Wilson. App. 9, 12. Wilson told the officers, among other things, that she had seen Logan with a gun and that he usually kept it in the car. *Id.*, at 9. Logan, who was with Wil-

[1] FOPA, 100 Stat. 449, included a "safety valve" provision under which persons subject to federal firearms disabilities, including persons whose civil rights have not been restored, may apply to the Attorney General for relief from the disabilities. See 18 U. S. C. §925(c) (2000 ed., Supp. V). The relief provision has been rendered inoperative, however, for Congress has repeatedly barred the Attorney General from using appropriated funds "to investigate or act upon [relief] applications." *United States* v. *Bean*, 537 U. S. 71, 74–75 (2002) (internal quotation marks omitted). The bar on funding was renewed every year from 1992 through 2006. See *id.*, at 75, n. 3 (1992 through 2002); Consolidated Appropriations Resolution, 2003, 117 Stat. 433; Consolidated Appropriations Act, 2004, 118 Stat. 53; Consolidated Appropriations Act, 2005, 118 Stat. 2859; Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, 119 Stat. 2290.

son when the police arrived, consented to a search of his car. *Id.*, at 11. In a hidden compartment behind the glove box, the officers found a 9-millimeter handgun. *Id.*, at 9–10, 12.

Logan pleaded guilty to the federal offense of possession of a firearm after having been convicted of a felony. *Id.*, at 12. (In 1991, he had been convicted in an Illinois court of unlawful possession of a controlled substance. *Id.*, at 9–10, 12.) The United States District Court for the Western District of Wisconsin sentenced Logan to imprisonment for 15 years, the mandatory minimum under ACCA. In imposing that enhanced sentence, the District Court took account of Logan's three Wisconsin misdemeanor battery convictions, each punishable by a maximum sentence of three years' imprisonment. *Id.*, at 16–18.[2]

Both in the District Court and on appeal, Logan argued that his Wisconsin misdemeanor convictions did not qualify as ACCA predicate offenses because they caused no loss of his civil rights. Rights retained, he urged, are functionally equivalent to rights revoked but later restored. If the exemption contained in §921(a)(20) covered the three state-court misdemeanor convictions, Logan's maximum sentence, in lieu of the 15-year mandatory minimum under ACCA, would have been ten years, see §924(a)(2), and the United

[2] Under Wisconsin law, misdemeanor battery is ordinarily punishable by a maximum term of nine months. See Wis. Stat. §940.19(1) (2005); §939.51(3). Logan was exposed to a three-year maximum term for each offense, however, because he was convicted as a "repeater" or "habitual" criminal. See App. 16–17; Wis. Stat. §939.62 (1999–2000).

Postdating Logan's battery convictions, Wisconsin prospectively reduced the maximum term for "repeater" misdemeanors to two years. See 2001 Wis. Act 109, §562 (Jan. 2002 special session) (amending Wis. Stat. §939.62). Misdemeanors committed in Wisconsin after this reduction no longer qualify as "violent felonies" under 18 U. S. C. §921(a)(20).

Logan has never argued that his Wisconsin convictions should not count as ACCA predicates because they were punishable by more than two years' imprisonment solely because of his status as a recidivist offender. We express no opinion on this matter. Cf. *United States* v. *Rodriquez*, 464 F. 3d 1072 (CA9 2006), cert. granted, 551 U. S. 1191 (2007).

States Sentencing Guidelines would have indicated a sentence range of 37 to 46 months, see Brief for Petitioner 5. The District Court rejected Logan's argument, holding that the §921(a)(20) exemption provision "applies only to defendants whose civil rights were both lost and restored pursuant to state statutes." App. in No. 05–CR–088–S–01 (WD Wis.), p. 11. Accordingly, the court sentenced Logan to imprisonment for 15 years. *Id.*, at 12.

The United States Court of Appeals for the Seventh Circuit affirmed, concluding that "an offender whose civil rights have been neither diminished nor returned is not a person who 'has had civil rights restored.'" 453 F. 3d 804, 805 (2006). Logan's argument for treating retained rights the same way as restored rights, the appeals court observed, "go[es] in the teeth of [§921(a)(20)'s] text." *Ibid.*

We granted certiorari, 549 U. S. 1204 (2007), to resolve a split among the Circuits as to whether §921(a)(20)'s exception for "civil rights restored" should be interpreted to include civil rights retained at all times. Compare 453 F. 3d, at 809 (case below) ("civil rights restored" does not include civil rights never revoked), and *McGrath* v. *United States*, 60 F. 3d 1005 (CA2 1995) (same), with *United States* v. *Indelicato*, 97 F. 3d 627, 631 (CA1 1996) ("civil rights restored" includes civil rights never lost).

III

Logan pleaded guilty to being a felon in possession of a firearm, in violation of §922(g)(1), and received a mandatory minimum 15-year sentence because he had at least three prior convictions for "violent felon[ies]." §924(e)(1) (2000 ed., Supp. V). He acknowledges his convictions in Wisconsin for three battery offenses that facially qualify as violent felonies under §921(a)(20)(B) (2000 ed.). See Brief for Petitioner 4–5. Thus the sole matter in dispute is whether Logan fits within the exemption from an ACCA-enhanced sentence for convictions "expunged, or set aside" or offend-

ers who "ha[ve] been pardoned or ha[ve] had civil rights restored." §921(a)(20). None of Logan's battery convictions have been expunged, set aside, or pardoned. See 453 F. 3d, at 809. Under Wisconsin law, felons lose but can regain their civil rights and can gain the removal of firearms disabilities. See Wis. Stat. §6.03(1)(b) (Supp. 2006); Wis. Const., Art. XIII, §3(2); Wis. Stat. §756.02 (2001); §973.176(1) (2007). Persons convicted of misdemeanors, however, even if they are repeat offenders, generally retain their civil rights and are not subject to firearms disabilities.

With this background in view, we turn to the proper interpretation of the §921(a)(20) exemption from ACCA-enhanced sentencing for offenders who have had their "civil rights restored." Logan's misdemeanor convictions, we reiterate, did not result in any loss of the rights to vote, hold public office, or serve on juries. Should he nonetheless be ranked with offenders whose rights were terminated but later restored? The ordinary meaning of the word "restored" affords Logan no aid. In line with dictionary definitions,[3] the Court of Appeals stated: "The word 'restore' means to give back something that had been taken away." 453 F. 3d, at 805. Accord *McGrath*, 60 F. 3d, at 1007 ("The 'restoration' of a thing never lost or diminished is a definitional impossibility."); cf. *Indelicato*, 97 F. 3d, at 629 ("Clearly the ordinary reading of the word 'restored' supports the government.").

The context in which the word "restored" appears in §921(a)(20) counsels adherence to the word's ordinary meaning. Words in a list are generally known by the company they keep. *E. g.*, *Dole* v. *Steelworkers*, 494 U. S. 26, 36

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[3] See, *e. g.*, Webster's Third New International Dictionary 1936 (1993) (defining "restore" to mean "give back (as something lost or taken away)"); American Heritage Dictionary 1486 (4th ed. 2000) (defining "restore" to mean "bring back into existence or use; reestablish"); 13 Oxford English Dictionary 755 (2d ed. 1989) (defining "restore" to mean "give back, [or] make return or restitution of (anything previously taken away or lost)").

(1990); *Beecham* v. *United States*, 511 U. S. 368, 371 (1994). In §921(a)(20), the words "civil rights restored" appear in the company of the words "expunged," "set aside," and "pardoned." Each term describes a measure by which the government relieves an offender of some or all of the consequences of his conviction. In contrast, a defendant who retains rights is simply left alone. He receives no status-altering dispensation, no token of forgiveness from the government.

Opposing a plain-meaning approach to the language Congress enacted, Logan relies dominantly on the harsh results a literal reading could yield: Unless retention of rights is treated as legally equivalent to restoration of rights, less serious offenders will be subject to ACCA's enhanced penalties while more serious offenders in the same State, who have had civil rights restored, may escape heightened punishment. *E. g.*, Reply Brief 8 ("[I]ndividuals who have committed more serious crimes than Petitioner may nonetheless have their rights restored, whereas misdemeanants who never lost their rights must suffer enhanced sentencing."). Logan urges that this result—treating those who never lost their civil rights more harshly than those who lost, then regained, those rights—is not merely anomalous; it rises to the level of the absurd, particularly in States where restoration of civil rights is automatic and occurs immediately upon release from prison. See *Caron*, 524 U. S., at 313 (automatic restoration of rights qualifies for §921(a)(20)'s exemption).

Logan's argument, we note, overlooks §921(a)(20)'s "unless" clause. Under that provision, an offender gains no exemption from ACCA's application through an expungement, set-aside, pardon, or restoration of civil rights if the dispensation "expressly provides that the [offender] may not ship, transport, possess, or receive firearms." Many States that restore felons' civil rights (or accord another measure of forgiveness) nonetheless impose or retain firearms disabilities.

See Brief for United States 30 (citing, *inter alia*, La. Rev. Stat. Ann. § 14:95.1(C) (West Supp. 2007), under which felons' firearms disabilities are lifted only after ten years and only if no further felony convictions intervene).[4] We further note that Wisconsin has addressed, and prospectively eliminated, the anomaly Logan asserts he encountered: Wisconsin no longer punishes misdemeanors by more than two years of imprisonment, and thus no longer has any misdemeanors that qualify as ACCA predicates. See *supra*, at 29, n. 2.

One can demur to Logan's argument that a literal reading of § 921(a)(20) could produce anomalous results, for the resolution he proposes—reading into the exemption convictions under which civil rights are retained—would correct one potential anomaly while creating others. See *McGrath*, 60 F. 3d, at 1009. Under Logan's proposed construction, the most dangerous recidivists in a State that does not revoke any offender's civil rights could fall within § 921(a)(20)'s exemption. For example, Maine does not deprive any offenders of their civil rights. See Lodging for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* (NACDL Lodging), App. 1, pp. 23–24. As Logan would have us read § 921(a)(20), all Maine crimes, including first-degree murder, would be treated as crimes for which "civil rights [have been] restored," while less serious crimes committed elsewhere would not.

In *McGrath*, the Second Circuit incisively identified Congress' response to *Dickerson*, see *supra*, at 27–28, as the cause of the multiple anomalies § 921(a)(20) may produce:

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[4] Courts have divided on the question whether § 921(a)(20)'s "unless" clause is triggered whenever state law provides for the continuation of firearm proscriptions, or only when the State provides individual notice to the offender of the firearms disabilities. Compare, *e. g.*, *United States* v. *Cassidy*, 899 F. 2d 543, 549 (CA6 1990) (courts must look to "the whole of state law"), with *United States* v. *Gallaher*, 275 F. 3d 784, 791, and n. 3 (CA9 2001) (individualized notice is required). We express no opinion on this issue.

> "[Congress'] decision to have restoration triggered by events governed by state law insured anomalous results. The several states have considerably different laws governing pardon, expungement, and forfeiture and restoration of civil rights. Furthermore, states have drastically different policies as to when and under what circumstances such discretionary acts of grace should be extended. . . . [Anomalies generated by §921(a)(20)] are the inevitable consequence of making access to the exemption depend on the differing laws and policies of the several states." 60 F. 3d, at 1009.

Accord 453 F. 3d, at 807 ("When Congress replaced *Dickerso[n]* . . . it ensured that similarly situated people would be treated differently—for states vary widely in which if any civil rights a convict loses and whether these rights are restored."). See also M. Love, Relief from the Collateral Consequences of a Criminal Conviction: A State-by-State Resource Guide (2006), updated online at http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=486 (as visited Nov. 27, 2007, and in Clerk of Court's case file) (surveying state practices).

Were we to accept Logan's argument, it bears emphasis, we would undercut §921(a)(20)(B), which places within ACCA's reach state misdemeanor convictions punishable by more than two years' imprisonment. Because state-law misdemeanors generally entail no revocation of civil rights,[5] Logan's proposed reading of the word "restored" to include "retained" would yield this curiosity: An offender would fall within ACCA's reach if his three prior offenses carried potential prison terms of over two years, but that same of-

[5] See NACDL Lodging, App. 1 (compiling state laws); *id.*, at 17–34 (indicating that Connecticut, Florida, Iowa, Louisiana, Nebraska, and New Hampshire revoke no misdemeanant's civil rights, but provide for punishment of certain crimes they classify as misdemeanors by prison terms exceeding two years).

fender would be released from ACCA's grip by virtue of his retention of civil rights. We are disinclined to say that what Congress imposed with one hand (exposure to ACCA) it withdrew with the other (exemption from ACCA).

We may assume, *arguendo*, that when Congress revised § 921(a)(20) in 1986, see *supra*, at 27–28, it labored under the misapprehension that all offenders—misdemeanants as well as felons—forfeit civil rights, at least temporarily. Even indulging the further assumption that courts may repair such a congressional oversight or mistake,[6] we could hardly divine the revision the Legislature would favor. Perhaps Congress would choose to exempt offenders who never lost their civil rights. See *McGrath*, 60 F. 3d, at 1009. But it is also plausible that Congress would remove the exemption for civil rights restoration as insufficiently indicative of official forgiveness. Or, Congress might elect to include restorations of civil rights along with expungements, set-asides, and pardons only if the restoration was nonautomatic, *i. e.*, granted on a case-by-case basis. Homing in on the disparities resulting from diverse state legislation, see *supra*, at 33–34 and this page, Congress might even revise § 921(a)(20) to provide, in accord with *Dickerson*, that federal rather than state law defines a conviction for purposes of §§ 922 and 924. See 453 F. 3d, at 806–807.

In all events, a measure adopted ten years after § 921(a)(20) was given its current shape cautions against any assumption that Congress did not mean to deny that exemption to offenders who retained their civil rights. In 1996, Congress enacted § 922(g)(9), which outlaws possession of a firearm by anyone "who has been convicted . . . of a misdemeanor crime of domestic violence." See Pub. L. 104–208,

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[6] But see *Iselin* v. *United States*, 270 U. S. 245, 251 (1926) ("enlargement of [a statute] by [a] court, so that what was omitted, presumably by inadvertence, may be included within its scope . . . transcends the judicial function").

Tit. VI, § 658, 110 Stat. 3009–371 to 3009–372. Tailored to § 922(g)(9), Congress adopted a definitional provision, corresponding to § 921(a)(20), which reads:

> "A person shall not be considered to have been convicted of [a misdemeanor crime of domestic violence] if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored *(if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense)* unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." 18 U. S. C. § 921(a)(33)(B)(ii) (emphasis added).

Section 921(a)(33)(B)(ii) tracks § 921(a)(20) in specifying expungement, set-aside, pardon, or restoration of rights as dispensations that can cancel lingering effects of a conviction. But the emphasized parenthetical qualification shows that the words "civil rights restored" do not cover a person whose civil rights were never taken away. See 453 F. 3d, at 808. Section 921(a)(33)(B)(ii) casts considerable doubt on Logan's hypothesis that, had Congress adverted to the issue when it drafted § 921(a)(20), it would have placed in the same category persons who regained civil rights and persons who retained civil rights.

Congress' enactment of § 921(a)(33)(B)(ii) is also relevant to Logan's absurdity argument. See *supra*, at 32. Statutory terms, we have held, may be interpreted against their literal meaning where the words "could not conceivably have been intended to apply" to the case at hand. *Cabell* v. *Markham*, 148 F. 2d 737, 739 (CA2) (L. Hand, J.), aff'd, 326 U. S. 404 (1945); see *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504, 511 (1989) (Federal Rule of Evidence 609(a)(1) "can't mean what it says" (internal quotation marks omitted)). In this case, it can hardly be maintained that Congress could not have meant what it said. Congress explic-

itly distinguished between "restored" and "retained" in § 921(a)(33)(B)(ii). It is more than "conceivable" that the Legislature, albeit an earlier one, see *supra*, at 27–28, meant to do the same in § 921(a)(20).

In sum, Congress framed § 921(a)(20) to serve two purposes. See Tr. of Oral Arg. 28–29. It sought to qualify as ACCA predicate offenses violent crimes that a State classifies as misdemeanors yet punishes by a substantial term of imprisonment, *i. e.*, more than two years. See § 921(a)(20)(B). Congress also sought to defer to a State's dispensation relieving an offender from disabling effects of a conviction. See *supra*, at 27–28. Had Congress included a retention-of-rights exemption, however, the very misdemeanors it meant to cover would escape ACCA's reach. See *supra*, at 34–35. Logan complains of an anomalous result. Yet the solution he proposes would also produce anomalies. See *supra*, at 33. Having no warrant to stray from § 921(a)(20)'s text, we hold that the words "civil rights restored" do not cover the case of an offender who lost no civil rights.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Seventh Circuit is

Affirmed.

Syllabus

GALL *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 06–7949. Argued October 2, 2007—Decided December 10, 2007

Petitioner Gall joined an ongoing enterprise distributing the controlled substance "ecstasy" while in college, but withdrew from the conspiracy after seven months, has sold no illegal drugs since, and has used no illegal drugs and worked steadily since graduation. Three and a half years after withdrawing from the conspiracy, Gall pleaded guilty to his participation. A presentence report recommended a sentence of 30 to 37 months in prison, but the District Court sentenced Gall to 36 months' probation, finding that probation reflected the seriousness of his offense and that imprisonment was unnecessary because his voluntary withdrawal from the conspiracy and postoffense conduct showed that he would not return to criminal behavior and was not a danger to society. The Eighth Circuit reversed on the ground that a sentence outside the Federal Sentencing Guidelines range must be—and was not in this case—supported by extraordinary circumstances.

Held:

1. While the extent of the difference between a particular sentence and the recommended Guidelines range is relevant, courts of appeals must review all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of-discretion standard. Pp. 46–53.

(a) Because the Guidelines are now advisory, appellate review of sentencing decisions is limited to determining whether they are "reasonable," *United States* v. *Booker*, 543 U. S. 220, and an abuse-of-discretion standard applies to appellate review of sentencing decisions. A district judge must consider the extent of any departure from the Guidelines and must explain the appropriateness of an unusually lenient or harsh sentence with sufficient justifications. An appellate court may take the degree of variance into account and consider the extent of a deviation from the Guidelines, but it may not require "extraordinary" circumstances or employ a rigid mathematical formula using a departure's percentage as the standard for determining the strength of the justification required for a specific sentence. Such approaches come too close to creating an impermissible unreasonableness presumption for sentences outside the Guidelines range. The mathematical approach also suffers

Syllabus

from infirmities of application. And both approaches reflect a practice of applying a heightened standard of review to sentences outside the Guidelines range, which is inconsistent with the rule that the abuse-of-discretion standard applies to appellate review of all sentencing decisions—whether inside or outside that range. Pp. 46–49.

(b) A district court should begin by correctly calculating the applicable Guidelines range. The Guidelines are the starting point and initial benchmark but are not the only consideration. After permitting both parties to argue for a particular sentence, the judge should consider all of 18 U. S. C. §3553(a)'s factors to determine whether they support either party's proposal. He may not presume that the Guidelines range is reasonable but must make an individualized assessment based on the facts presented. If he decides on an outside-the-Guidelines sentence, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of variation. He must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing. In reviewing the sentence, the appellate court must first ensure that the district court made no significant procedural errors and then consider the sentence's substantive reasonableness under an abuse-of-discretion standard, taking into account the totality of the circumstances, including the extent of a variance from the Guidelines range, but must give due deference to the district court's decision that the §3553(a) factors justify the variance. That the appellate court might have reasonably reached a different conclusion does not justify reversal. Pp. 49–53.

2. On abuse-of-discretion review, the Eighth Circuit failed to give due deference to the District Court's reasoned and reasonable sentencing decision. Since the District Court committed no procedural error, the only question for the Circuit was whether the sentence was reasonable, *i. e.*, whether the District Judge abused his discretion in determining that the §3553(a) factors supported the sentence and justified a substantial deviation from the Guidelines range. The Circuit gave virtually no deference to the District Court's decision that the variance was justified. The Circuit clearly disagreed with the District Court's decision, but it was not for the Circuit to decide *de novo* whether the justification for a variance is sufficient or the sentence reasonable. Pp. 53–60.

446 F. 3d 884, reversed.

STEVENS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., *post*, p. 60, and SOUTER, J., *post*, p. 60, filed concurring opinions. THOMAS, J., *post*, p. 61, and ALITO, J., *post*, p. 61, filed dissenting opinions.

Jeffrey T. Green, by appointment of the Court, 551 U. S. 1186, argued the cause for petitioner. With him on the briefs were *Quin M. Sorenson*, *Michael Dwyer*, *David Hemingway*, *Marc Milavitz*, *Jeffrey L. Fisher*, and *Sarah O'Rourke Schrup*.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Fisher*, *Matthew D. Roberts*, *Nina Goodman*, and *Jeffrey P. Singdahlsen*.*

JUSTICE STEVENS delivered the opinion of the Court.

In two cases argued on the same day last Term we considered the standard that courts of appeals should apply when reviewing the reasonableness of sentences imposed by district judges. The first, *Rita* v. *United States*, 551 U. S. 338 (2007), involved a sentence *within* the range recommended by the Federal Sentencing Guidelines; we held that when a district judge's discretionary decision in a particular case accords with the sentence the United States Sentencing Commission deems appropriate "in the mine run of cases," the court of appeals may presume that the sentence is reasonable. *Id.*, at 351.

The second case, *Claiborne* v. *United States*, involved a sentence *below* the range recommended by the Guidelines, and raised the converse question whether a court of appeals may apply a "proportionality test," and require that a sen-

*Briefs of *amici curiae* urging reversal were filed for Families Against Mandatory Minimums by *Gregory L. Poe* and *Mary Price*; for Federal Public and Community Defenders et al. by *Amy Baron-Evans*, *Sara E. Noonan*, *Jennifer Niles Coffin*, *Carlos A. Williams*, *Paul M. Rashkind*, *Daniel L. Kaplan*, *David Lewis*, *Timothy Crooks*, and *Kristen Gartman Rogers*; for the National Association of Criminal Defense Lawyers by *Miguel A. Estrada*, *David Debold*, and *Peter Goldberger*; and for the Washington Legal Foundation et al. by *Daniel J. Popeo* and *Paul D. Kamenar*.

Alexandra A. E. Shapiro and *Douglas A. Berman* filed a brief for the New York Council of Defense Lawyers as *amicus curiae*.

tence that constitutes a substantial variance from the Guidelines be justified by extraordinary circumstances. See *Claiborne* v. *United States*, 549 U. S. 1016 (2006). We did not have the opportunity to answer this question because the case was mooted by Claiborne's untimely death. *Claiborne* v. *United States*, 551 U. S. 87 (2007) *(per curiam)*. We granted certiorari in the case before us today in order to reach that question, left unanswered last Term. 551 U. S. 1113 (2007). We now hold that, while the extent of the difference between a particular sentence and the recommended Guidelines range is surely relevant, courts of appeals must review all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of-discretion standard. We also hold that the sentence imposed by the experienced District Judge in this case was reasonable.

I

In February or March 2000, petitioner Brian Gall, a second-year college student at the University of Iowa, was invited by Luke Rinderknecht to join an ongoing enterprise distributing a controlled substance popularly known as "ecstasy."[1] Gall—who was then a user of ecstasy, cocaine, and marijuana—accepted the invitation. During the ensuing seven months, Gall delivered ecstasy pills, which he received from Rinderknecht, to other conspirators, who then sold them to consumers. He netted over $30,000.

A month or two after joining the conspiracy, Gall stopped using ecstasy. A few months after that, in September 2000, he advised Rinderknecht and other co-conspirators that he was withdrawing from the conspiracy. He has not sold illegal drugs of any kind since. He has, in the words of the District Court, "self-rehabilitated." App. 75. He graduated from the University of Iowa in 2002, and moved first to

[1] Ecstasy is sometimes called "MDMA" because its scientific name is "methylenedioxymethamphetamine." App. 24, 118.

Arizona, where he obtained a job in the construction industry, and later to Colorado, where he earned $18 per hour as a master carpenter. He has not used any illegal drugs since graduating from college.

After Gall moved to Arizona, he was approached by federal law enforcement agents who questioned him about his involvement in the ecstasy distribution conspiracy. Gall admitted his limited participation in the distribution of ecstasy, and the agents took no further action at that time. On April 28, 2004—approximately 1½ years after this initial interview, and 3½ years after Gall withdrew from the conspiracy—an indictment was returned in the Southern District of Iowa charging him and seven other defendants with participating in a conspiracy to distribute ecstasy, cocaine, and marijuana, that began in or about May 1996 and continued through October 30, 2002. The Government has never questioned the truthfulness of any of Gall's earlier statements or contended that he played any role in, or had any knowledge of, other aspects of the conspiracy described in the indictment. When he received notice of the indictment, Gall moved back to Iowa and surrendered to the authorities. While free on his own recognizance, Gall started his own business in the construction industry, primarily engaged in subcontracting for the installation of windows and doors. In his first year, his profits were over $2,000 per month.

Gall entered into a plea agreement with the Government, stipulating that he was "responsible for, but did not necessarily distribute himself, at least 2,500 grams of [ecstasy], or the equivalent of at least 87.5 kilograms of marijuana." *Id.*, at 25. In the agreement, the Government acknowledged that "on or about September of 2000," Gall had communicated his intent to stop distributing ecstasy to Rinderknecht and other members of the conspiracy. *Ibid.* The agreement further provided that recent changes in the Guidelines that enhanced the recommended punishment for distributing ecstasy were not applicable to Gall because he had with-

drawn from the conspiracy prior to the effective date of those changes.

In her presentence report, the probation officer concluded that Gall had no significant criminal history; that he was not an organizer, leader, or manager; and that his offense did not involve the use of any weapons. The report stated that Gall had truthfully provided the Government with all of the evidence he had concerning the alleged offenses, but that his evidence was not useful because he provided no new information to the agents. The report also described Gall's substantial use of drugs prior to his offense and the absence of any such use in recent years. The report recommended a sentencing range of 30 to 37 months of imprisonment.

The record of the sentencing hearing held on May 27, 2005, includes a "small flood" of letters from Gall's parents and other relatives, his fiance, neighbors, and representatives of firms doing business with him, uniformly praising his character and work ethic. The transcript includes the testimony of several witnesses and the District Judge's colloquy with the assistant United States attorney (AUSA) and with Gall. The AUSA did not contest any of the evidence concerning Gall's law-abiding life during the preceding five years, but urged that "the guidelines are appropriate and should be followed," and requested that the court impose a prison sentence within the Guidelines range. *Id.*, at 93. He mentioned that two of Gall's co-conspirators had been sentenced to 30 and 35 months, respectively, but upon further questioning by the District Court, he acknowledged that neither of them had voluntarily withdrawn from the conspiracy.

The District Judge sentenced Gall to probation for a term of 36 months. In addition to making a lengthy statement on the record, the judge filed a detailed sentencing memorandum explaining his decision, and provided the following statement of reasons in his written judgment:

> "The Court determined that, considering all the factors under 18 U. S. C. 3553(a), the Defendant's explicit

> withdrawal from the conspiracy almost four years before the filing of the Indictment, the Defendant's post-offense conduct, especially obtaining a college degree and the start of his own successful business, the support of family and friends, lack of criminal history, and his age at the time of the offense conduct, all warrant the sentence imposed, which was sufficient, but not greater than necessary to serve the purposes of sentencing." *Id.*, at 117.

At the end of both the sentencing hearing and the sentencing memorandum, the District Judge reminded Gall that probation, rather than "an act of leniency," is a "substantial restriction of freedom." *Id.*, at 99, 125. In the memorandum, he emphasized:

> "[Gall] will have to comply with strict reporting conditions along with a three-year regime of alcohol and drug testing. He will not be able to change or make decisions about significant circumstances in his life, such as where to live or work, which are prized liberty interests, without first seeking authorization from his Probation Officer or, perhaps, even the Court. Of course, the Defendant always faces the harsh consequences that await if he violates the conditions of his probationary term." *Id.*, at 125.

Finally, the District Judge explained why he had concluded that the sentence of probation reflected the seriousness of Gall's offense and that no term of imprisonment was necessary:

> "Any term of imprisonment in this case would be counter effective by depriving society of the contributions of the Defendant who, the Court has found, understands the consequences of his criminal conduct and is doing everything in his power to forge a new life. The Defendant's post-offense conduct indicates neither that he will return to criminal behavior nor that the Defendant is a danger to society. In fact, the Defendant's

post-offense conduct was not motivated by a desire to please the Court or any other governmental agency, but was the pre-Indictment product of the Defendant's own desire to lead a better life." *Id.*, at 125–126.

II

The Court of Appeals reversed and remanded for resentencing. Relying on its earlier opinion in *United States* v. *Claiborne*, 439 F. 3d 479 (CA8 2006), it held that a sentence outside of the Guidelines range must be supported by a justification that "'"is proportional to the extent of the difference between the advisory range and the sentence imposed."'" 446 F. 3d 884, 889 (CA8 2006) (quoting *Claiborne*, 439 F. 3d, at 481, in turn quoting *United States* v. *Johnson*, 427 F. 3d 423, 426–427 (CA7 2005)). Characterizing the difference between a sentence of probation and the bottom of Gall's advisory Guidelines range of 30 months as "extraordinary" because it amounted to "a 100% downward variance," 446 F. 3d, at 889, the Court of Appeals held that such a variance must be—and here was not—supported by extraordinary circumstances.

Rather than making an attempt to quantify the value of the justifications provided by the District Judge, the Court of Appeals identified what it regarded as five separate errors in the District Judge's reasoning: (1) He gave "too much weight to Gall's withdrawal from the conspiracy"; (2) given that Gall was 21 at the time of his offense, the District Judge erroneously gave "significant weight" to studies showing impetuous behavior by persons under the age of 18; (3) he did not "properly weigh" the seriousness of Gall's offense; (4) he failed to consider whether a sentence of probation would result in "unwarranted" disparities; and (5) he placed "too much emphasis on Gall's post-offense rehabilitation." *Id.*, at 889–890. As we shall explain, we are not persuaded that these factors, whether viewed separately or in the aggregate, are sufficient to support the conclusion that the District

Judge abused his discretion. As a preface to our discussion of these particulars, however, we shall explain why the Court of Appeals' rule requiring "proportional" justifications for departures from the Guidelines range is not consistent with our remedial opinion in *United States* v. *Booker*, 543 U. S. 220 (2005).

III

In *Booker* we invalidated both the statutory provision, 18 U. S. C. §3553(b)(1) (2000 ed., Supp. IV), which made the Sentencing Guidelines mandatory, and §3742(e) (2000 ed. and Supp. IV), which directed appellate courts to apply a *de novo* standard of review to departures from the Guidelines. As a result of our decision, the Guidelines are now advisory, and appellate review of sentencing decisions is limited to determining whether they are "reasonable." Our explanation of "reasonableness" review in the *Booker* opinion made it pellucidly clear that the familiar abuse-of-discretion standard of review now applies to appellate review of sentencing decisions. See 543 U. S., at 260–262; see also *Rita*, 551 U. S., at 361–362 (STEVENS, J., concurring).

It is also clear that a district judge must give serious consideration to the extent of any departure from the Guidelines and must explain his conclusion that an unusually lenient or an unusually harsh sentence is appropriate in a particular case with sufficient justifications. For even though the Guidelines are advisory rather than mandatory, they are, as we pointed out in *Rita*, the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions.[2] *Id.*, at 349.

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[2] Notably, not all of the Guidelines are tied to this empirical evidence. For example, the Sentencing Commission departed from the empirical approach when setting the Guidelines range for drug offenses, and chose instead to key the Guidelines to the statutory mandatory minimum sentences that Congress established for such crimes. See United States Sentencing Commission, Guidelines Manual §1A1.1 (Nov. 2006) (USSG). This decision, and its effect on a district judge's authority to deviate from the

In reviewing the reasonableness of a sentence outside the Guidelines range, appellate courts may therefore take the degree of variance into account and consider the extent of a deviation from the Guidelines. We reject, however, an appellate rule that requires "extraordinary" circumstances to justify a sentence outside the Guidelines range. We also reject the use of a rigid mathematical formula that uses the percentage of a departure as the standard for determining the strength of the justifications required for a specific sentence.

As an initial matter, the approaches we reject come too close to creating an impermissible presumption of unreasonableness for sentences outside the Guidelines range. See *id.*, at 354–355 ("The fact that we permit courts of appeals to adopt a presumption of reasonableness does not mean that courts may adopt a presumption of unreasonableness").[3] Even the Government has acknowledged that such a presumption would not be consistent with *Booker*. See Brief for United States in *Rita* v. *United States*, O. T. 2006, No. 06–5754, pp. 34–35.

The mathematical approach also suffers from infirmities of application. On one side of the equation, deviations from

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Guidelines range in a particular drug case, is addressed in *Kimbrough* v. *United States*, *post*, p. 85.

[3]Several Courts of Appeals had rejected such a presumption of unreasonableness even prior to our decision in *Rita*. See, *e. g.*, *United States* v. *Howard*, 454 F. 3d 700, 703 (CA7 2006) ("Although a sentence outside the range does not enjoy the presumption of reasonableness that one within the range does, it does not warrant a presumption of unreasonableness"); *United States* v. *Matheny*, 450 F. 3d 633, 642 (CA6 2006) ("[T]his court's holding that sentences within the advisory guideline range are presumptively reasonable does not mean that sentences outside of that range are presumptively unreasonable"); *United States* v. *Myers*, 439 F. 3d 415, 417 (CA8 2006) ("We have determined that a sentence imposed within the guidelines range is presumptively reasonable. While it does not follow that a sentence outside the guidelines range is unreasonable, we review a district court's decision to depart from the appropriate guidelines range for abuse of discretion" (citation omitted)).

the Guidelines range will always appear more extreme—in percentage terms—when the range itself is low, and a sentence of probation will always be a 100% departure regardless of whether the Guidelines range is 1 month or 100 years. Moreover, quantifying the variance as a certain percentage of the maximum, minimum, or median prison sentence recommended by the Guidelines gives no weight to the "substantial restriction of freedom" involved in a term of supervised release or probation. App. 95.

We recognize that custodial sentences are qualitatively more severe than probationary sentences of equivalent terms. Offenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty. See *United States* v. *Knights*, 534 U. S. 112, 119 (2001) ("Inherent in the very nature of probation is that probationers 'do not enjoy the absolute liberty to which every citizen is entitled'" (quoting *Griffin* v. *Wisconsin*, 483 U. S. 868, 874 (1987); internal quotation marks omitted)).[4] Probationers may not leave the judicial district, move, or change jobs without notifying, and in some cases receiving permission from, their probation officer or the court. They must report regularly to their probation officer, permit unannounced visits to their homes, refrain from associating with any person convicted of a felony, and refrain from excessive drinking. USSG §5B1.3. Most probationers are also subject to individual "special conditions" imposed by the court. Gall, for instance, may not patronize any establishment that

[4] See also Advisory Council of Judges of National Council on Crime and Delinquency, Guides for Sentencing 13–14 (1957) ("Probation is not granted out of a spirit of leniency. . . . As the Wickersham Commission said, probation is not merely 'letting an offender off easily'"); 1 N. Cohen, The Law of Probation and Parole §7:9 (2d ed. 1999) ("[T]he probation or parole conditions imposed on an individual can have a significant impact on both that person and society. . . . Often these conditions comprehensively regulate significant facets of their day-to-day lives. . . . They may become subject to frequent searches by government officials, as well as to mandatory counseling sessions with a caseworker or psychotherapist").

derives more than 50% of its revenue from the sale of alcohol, and must submit to random drug tests as directed by his probation officer. App. 109.

On the other side of the equation, the mathematical approach assumes the existence of some ascertainable method of assigning percentages to various justifications. Does withdrawal from a conspiracy justify more or less than, say, a 30% reduction? Does it matter that the withdrawal occurred several years ago? Is it relevant that the withdrawal was motivated by a decision to discontinue the use of drugs and to lead a better life? What percentage, if any, should be assigned to evidence that a defendant poses no future threat to society, or to evidence that innocent third parties are dependent on him? The formula is a classic example of attempting to measure an inventory of apples by counting oranges.[5]

Most importantly, both the exceptional circumstances requirement and the rigid mathematical formulation reflect a practice—common among courts that have adopted "proportional review"—of applying a heightened standard of review to sentences outside the Guidelines range. This is inconsistent with the rule that the abuse-of-discretion standard of review applies to appellate review of all sentencing decisions—whether inside or outside the Guidelines range.

As we explained in *Rita*, a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. See 551 U. S., at 347–348. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the §3553(a)

[5] Notably, when the Court of Appeals explained its disagreement with the District Judge's decision in this case, it made no attempt to quantify the strength of any of the mitigating circumstances.

factors to determine whether they support the sentence requested by a party.[6] In so doing, he may not presume that the Guidelines range is reasonable. See *id.*, at 351. He must make an individualized assessment based on the facts presented. If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. We find it uncontroversial that a major departure should be supported by a more significant justification than a minor one. After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing. *Id.*, at 356–358.

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[6] Section 3553(a) lists seven factors that a sentencing court must consider. The first factor is a broad command to consider "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U. S. C. §3553(a)(1). The second factor requires the consideration of the general purposes of sentencing, including:

"the need for the sentence imposed—

"(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

"(B) to afford adequate deterrence to criminal conduct;

"(C) to protect the public from further crimes of the defendant; and

"(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." §3553(a)(2).

The third factor pertains to "the kinds of sentences available," §3553(a)(3); the fourth to the Sentencing Guidelines; the fifth to any relevant policy statement issued by the Sentencing Commission; the sixth to "the need to avoid unwarranted sentence disparities," §3553(a)(6); and the seventh to "the need to provide restitution to any victim," §3553(a)(7). Preceding this list is a general directive to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing described in the second factor. §3553(a) (2000 ed., Supp. V). The fact that §3553(a) explicitly directs sentencing courts to consider the Guidelines supports the premise that district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.

Regardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard. It must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the §3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range. Assuming that the district court's sentencing decision is procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard. When conducting this review, the court will, of course, take into account the totality of the circumstances, including the extent of any variance from the Guidelines range. If the sentence is within the Guidelines range, the appellate court may, but is not required to, apply a presumption of reasonableness. *Id.*, at 347. But if the sentence is outside the Guidelines range, the court may not apply a presumption of unreasonableness. It may consider the extent of the deviation, but must give due deference to the district court's decision that the §3553(a) factors, on a whole, justify the extent of the variance. The fact that the appellate court might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court.

Practical considerations also underlie this legal principle. "The sentencing judge is in a superior position to find facts and judge their import under §3553(a) in the individual case. The judge sees and hears the evidence, makes credibility determinations, has full knowledge of the facts and gains insights not conveyed by the record." Brief for Federal Public and Community Defenders et al. as *Amici Curiae* 16. "The sentencing judge has access to, and greater familiarity with, the individual case and the individual defendant before

him than the Commission or the appeals court." *Rita*, 551 U. S., at 357–358. Moreover, "[d]istrict courts have an institutional advantage over appellate courts in making these sorts of determinations, especially as they see so many more Guidelines cases than appellate courts do." *Koon* v. *United States*, 518 U. S. 81, 98 (1996).[7]

"It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Id.*, at 113.[8] The uniqueness of the individual case, however, does not change the deferential abuse-of-discretion standard of review that applies to all sentencing decisions. As we shall now explain, the opinion of the Court of Appeals in this case does not reflect the requisite deference and does not

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[7] District judges sentence, on average, 117 defendants every year. Administrative Office of United States Courts, 2006 Federal Court Management Statistics 167. The District Judge in this case, Judge Pratt, has sentenced over 990 offenders over the course of his career. *United States* v. *Likens*, 464 F. 3d 823, 827, n. 1 (CA8 2006) (Bright, J., dissenting). Only a relatively small fraction of these defendants appeal their sentence on reasonableness grounds. See *Koon*, 518 U. S., at 98 ("In 1994, for example, 93.9% of Guidelines cases were not appealed"); *Likens*, 464 F. 3d, at 827, n. 1 (Bright, J., dissenting) (noting that the District Judge had sentenced hundreds of defendants and that "[w]e have reviewed only a miniscule number of those cases"); cf. United States Sentencing Commission, 2006 Sourcebook of Federal Sentencing Statistics 135–152.

[8] It is particularly revealing that when we adopted an abuse-of-discretion standard in *Koon*, we explicitly rejected the Government's argument that "*de novo* review of departure decisions is necessary 'to protect against unwarranted disparities arising from the differing sentencing approaches of individual district judges.'" 518 U. S., at 97 (quoting Brief for United States, O. T. 1995, No. 94–1664, p. 12). Even then we were satisfied that a more deferential abuse-of-discretion standard could successfully balance the need to "reduce unjustified disparities" across the Nation and "consider every convicted person as an individual." 518 U. S., at 113.

support the conclusion that the District Court abused its discretion.

IV

As an initial matter, we note that the District Judge committed no significant procedural error. He correctly calculated the applicable Guidelines range, allowed both parties to present arguments as to what they believed the appropriate sentence should be, considered all of the §3553(a) factors, and thoroughly documented his reasoning. The Court of Appeals found that the District Judge erred in failing to give proper weight to the seriousness of the offense, as required by §3553(a)(2)(A), and failing to consider whether a sentence of probation would create unwarranted disparities, as required by §3553(a)(6). We disagree.

Section 3553(a)(2)(A) requires judges to consider "the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." The Court of Appeals concluded that "the district court did not properly weigh the seriousness of Gall's offense" because it "ignored the serious health risks ecstasy poses." 446 F. 3d, at 890. Contrary to the Court of Appeals' conclusion, the District Judge plainly did consider the seriousness of the offense. See, *e. g.*, App. 99 ("The Court, however, is bound to impose a sentence that reflects the seriousness of joining a conspiracy to distribute MDMA or Ecstasy"); *id.*, at 122.[9] It is true that the District

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[9]The District Judge also gave specific consideration to the fact—not directly taken into account by the Guidelines—that Gall netted $30,000 from his participation in the conspiracy. He noted, however:

"[T]his fact can be viewed from different perspectives. On the one hand, [Gall] should be punished for profiting from a criminal scheme. . . . On the other hand, [Gall], who is from a working-class family and has few financial resources, decided to turn his back on what, for him, was a highly profitable venture. . . . The Court can not consider, for the purposes of sentencing, one side of the financial aspect of the offense conduct without considering the other." App. 123–124, n. 3.

Judge did not make specific reference to the (unquestionably significant) health risks posed by ecstasy, but the prosecutor did not raise ecstasy's effects at the sentencing hearing. Had the prosecutor raised the issue, specific discussion of the point might have been in order, but it was not incumbent on the District Judge to raise every conceivably relevant issue on his own initiative.

The Government's legitimate concern that a lenient sentence for a serious offense threatens to promote disrespect for the law is at least to some extent offset by the fact that seven of the eight defendants in this case have been sentenced to significant prison terms. Moreover, the unique facts of Gall's situation provide support for the District Judge's conclusion that, in Gall's case, "a sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed as merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing." *Id.*, at 126.

Section 3553(a)(6) requires judges to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." The Court of Appeals stated that "the record does not show that the district court considered whether a sentence of probation would result in unwarranted disparities." 446 F. 3d, at 890. As with the seriousness of the offense conduct, avoidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges. Since the District Judge correctly calculated and carefully reviewed the Guidelines range, he necessarily gave significant weight and consideration to the need to avoid unwarranted disparities.

Moreover, as we understand the colloquy between the District Judge and the AUSA, it seems that the judge gave specific attention to the issue of disparity when he inquired about the sentences already imposed by a different judge on two of Gall's codefendants. The AUSA advised the District

Judge that defendant Harbison had received a 30-month sentence and that Gooding had received 35 months. The following colloquy then occurred:

> "THE COURT: . . . You probably know more about this than anybody. How long did those two stay in the conspiracy, and did they voluntarily withdraw?
>
> "MR. GRIESS: They did not.
>
> "THE COURT: They did not?
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> "MR. GRIESS: They did not voluntarily withdraw. And they were in the conspiracy, I think, for a shorter period of time, but at the very end.
>
> "THE COURT: Okay. Thank you.
>
> "MR. GRIESS: A significant difference there, Your Honor, is that they were in the conspiracy after the guidelines changed and, therefore, were sentenced at a much higher level because of that." App. 88.

A little later Mr. Griess stated: "The last thing I want to talk about goes to sentencing disparity . . . . Obviously, the Court is cognizant of that and wants to avoid any unwarranted sentencing disparities." *Id.*, at 89. He then discussed at some length the sentence of 36 months imposed on another codefendant, Jarod Yoder, whose participation in the conspiracy was roughly comparable to Gall's. Griess voluntarily acknowledged three differences between Yoder and Gall: Yoder was in the conspiracy at its end and therefore was sentenced under the more severe Guidelines, he had a more serious criminal history, and he did not withdraw from the conspiracy.

From these facts, it is perfectly clear that the District Judge considered the need to avoid unwarranted disparities, but also considered the need to avoid unwarranted *similarities* among other co-conspirators who were not similarly situated. The District Judge regarded Gall's voluntary withdrawal as a reasonable basis for giving him a less severe sentence than the three codefendants discussed with the

AUSA, who neither withdrew from the conspiracy nor rehabilitated themselves as Gall had done. We also note that neither the Court of Appeals nor the Government has called our attention to a comparable defendant who received a more severe sentence.

Since the District Court committed no procedural error, the only question for the Court of Appeals was whether the sentence was reasonable—*i. e.*, whether the District Judge abused his discretion in determining that the §3553(a) factors supported a sentence of probation and justified a substantial deviation from the Guidelines range. As we shall now explain, the sentence was reasonable. The Court of Appeals' decision to the contrary was incorrect and failed to demonstrate the requisite deference to the District Judge's decision.

V

The Court of Appeals gave virtually no deference to the District Court's decision that the §3553(a) factors justified a significant variance in this case. Although the Court of Appeals correctly stated that the appropriate standard of review was abuse of discretion, it engaged in an analysis that more closely resembled *de novo* review of the facts presented and determined that, in its view, the degree of variance was not warranted.

The Court of Appeals thought that the District Court "gave too much weight to Gall's withdrawal from the conspiracy because the court failed to acknowledge the significant benefit Gall received from being subject to the 1999 Guidelines."[10] 446 F. 3d, at 889. This criticism is flawed in that it ignores the critical relevance of Gall's voluntary withdrawal, a circumstance that distinguished his conduct not only from that of all his codefendants, but from the vast ma-

[10]The Court of Appeals explained that under the current Guidelines, which treat ecstasy more harshly, Gall's base offense level would have been 32, eight levels higher than the base offense level imposed under the 1999 Guidelines.

jority of defendants convicted of conspiracy in federal court. The District Court quite reasonably attached great weight to the fact that Gall voluntarily withdrew from the conspiracy after deciding, on his own initiative, to change his life. This lends strong support to the District Court's conclusion that Gall is not going to return to criminal behavior and is not a danger to society. See 18 U. S. C. §§3553(a)(2)(B), (C). Compared to a case where the offender's rehabilitation occurred after he was charged with a crime, the District Court here had greater justification for believing Gall's turnaround was genuine, as distinct from a transparent attempt to build a mitigation case.

The Court of Appeals thought the District Judge "gave significant weight to an improper factor" when he compared Gall's sale of ecstasy when he was a 21-year-old adult to the "impetuous and ill-considered" actions of persons under the age of 18. 446 F. 3d, at 890. The appellate court correctly observed that the studies cited by the District Judge do not explain how Gall's "specific behavior in the instant case was impetuous or ill-considered." *Ibid.*

In that portion of his sentencing memorandum, however, the judge was discussing the "character of the defendant," not the nature of his offense. App. 122. He noted that Gall's criminal history included a ticket for underage drinking when he was 18 years old and possession of marijuana that was contemporaneous with his offense in this case. In summary, the District Judge observed that all of Gall's criminal history, "including the present offense, occurred when he was twenty-one-years old or younger" and appeared "to stem from his addictions to drugs and alcohol." *Id.*, at 122, 123. The District Judge appended a long footnote to his discussion of Gall's immaturity. The footnote includes an excerpt from our opinion in *Roper* v. *Simmons*, 543 U. S. 551, 569 (2005), which quotes a study stating that a lack of maturity and an undeveloped sense of responsibility are qualities that "'often result in impetuous and ill-considered actions.'"

The District Judge clearly stated the relevance of these studies in the opening and closing sentences of the footnote:

> "Immaturity at the time of the offense conduct is not an inconsequential consideration. Recent studies on the development of the human brain conclude that human brain development may not become complete until the age of twenty-five. . . . [T]he recent [National Institutes of Health] report confirms that there is no bold line demarcating at what age a person reaches full maturity. While age does not excuse behavior, a sentencing court should account for age when inquiring into the conduct of a defendant." App. 123, n. 2.

Given the dramatic contrast between Gall's behavior before he joined the conspiracy and his conduct after withdrawing, it was not unreasonable for the District Judge to view Gall's immaturity at the time of the offense as a mitigating factor, and his later behavior as a sign that he had matured and would not engage in such impetuous and ill-considered conduct in the future. Indeed, his consideration of that factor finds support in our cases. See, *e. g.*, *Johnson* v. *Texas*, 509 U. S. 350, 367 (1993) (holding that a jury was free to consider a 19-year-old defendant's youth when determining whether there was a probability that he would continue to commit violent acts in the future and stating that "'youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage'" (quoting *Eddings* v. *Oklahoma*, 455 U. S. 104, 115 (1982))).

Finally, the Court of Appeals thought that, even if Gall's rehabilitation was dramatic and permanent, a sentence of probation for participation as a middleman in a conspiracy distributing 10,000 pills of ecstasy "lies outside the range of choice dictated by the facts of the case." 446 F. 3d, at 890 (internal quotation marks omitted). If the Guidelines were still mandatory, and assuming the facts did not justify a Guidelines-based downward departure, this would provide a sufficient basis for setting aside Gall's sentence because the

Guidelines state that probation alone is not an appropriate sentence for comparable offenses.[11] But the Guidelines are not mandatory, and thus the "range of choice dictated by the facts of the case" is significantly broadened. Moreover, the Guidelines are only one of the factors to consider when imposing sentence, and § 3553(a)(3) directs the judge to consider sentences other than imprisonment.

We also note that the Government did not argue below, and has not argued here, that a sentence of probation could never be imposed for a crime identical to Gall's. Indeed, it acknowledged that probation could be permissible if the record contained different—but in our view, no more compelling—mitigating evidence. Tr. of Oral Arg. 37–38 (stating that probation could be an appropriate sentence, given the exact same offense, if "there are compelling family circumstances where individuals will be very badly hurt in the defendant's family if no one is available to take care of them").

The District Court quite reasonably attached great weight to Gall's self-motivated rehabilitation, which was undertaken not at the direction of, or under supervision by, any court, but on his own initiative. This also lends strong support to the conclusion that imprisonment was not necessary to deter Gall from engaging in future criminal conduct or to protect the public from his future criminal acts. See 18 U. S. C. §§ 3553(a)(2)(B), (C).

The Court of Appeals clearly disagreed with the District Judge's conclusion that consideration of the § 3553(a) factors justified a sentence of probation; it believed that the circumstances presented here were insufficient to sustain such a marked deviation from the Guidelines range. But it is not for the Court of Appeals to decide *de novo* whether the justification for a variance is sufficient or the sentence reasonable. On abuse-of-discretion review, the Court of Appeals should have given due deference to the District Court's reasoned

[11] Specifically, probation is not recommended under the Guidelines when the applicable Guidelines range is outside Zone A of the sentencing table as it is here. USSG § 5B1.1.

and reasonable decision that the §3553(a) factors, on the whole, justified the sentence. Accordingly, the judgment of the Court of Appeals is reversed.

It is so ordered.

JUSTICE SCALIA, concurring.

I join the opinion of the Court.

In *Rita* v. *United States*, 551 U. S. 338, 370–375 (2007) (opinion concurring in part and concurring in judgment), I wrote separately to state my view that any appellate review of sentences for substantive reasonableness will necessarily result in a sentencing scheme constitutionally indistinguishable from the mandatory Guidelines struck down in *United States* v. *Booker*, 543 U. S. 220 (2005). Whether a sentencing scheme uses mandatory Guidelines, a "proportionality test" for Guidelines variances, or a deferential abuse-of-discretion standard, there will be some sentences upheld only on the basis of additional judge-found facts.

Although I continue to believe that substantive-reasonableness review is inherently flawed, I give *stare decisis* effect to the statutory holding of *Rita*. The highly deferential standard adopted by the Court today will result in far fewer unconstitutional sentences than the proportionality standard employed by the Eighth Circuit. Moreover, as I noted in *Rita*, the Court has not foreclosed as-applied constitutional challenges to sentences. The door therefore remains open for a defendant to demonstrate that his sentence, whether inside or outside the advisory Guidelines range, would not have been upheld but for the existence of a fact found by the sentencing judge and not by the jury.

JUSTICE SOUTER, concurring.

I join the Court's opinion here, as I do in today's companion case of *Kimbrough* v. *United States*, *post*, p. 85, which follow *United States* v. *Booker*, 543 U. S. 220 (2005), and *Rita* v. *United States*, 551 U. S. 338 (2007). My disagreements

with holdings in those earlier cases are not the stuff of formally perpetual dissent, but I see their objectionable points hexing our judgments today, see *id.*, at 389–392 (SOUTER, J., dissenting), and *Booker*, *supra*, at 272 (STEVENS, J., dissenting in part). After *Booker*'s remedial holding, I continue to think that the best resolution of the tension between substantial consistency throughout the system and the right of jury trial would be a new Act of Congress: reestablishing a statutory system of mandatory sentencing guidelines (though not identical to the original in all points of detail), but providing for jury findings of all facts necessary to set the upper range of sentencing discretion. See *Rita*, *supra*, at 392.

JUSTICE THOMAS, dissenting.

Consistent with my dissenting opinion in *Kimbrough* v. *United States*, *post*, p. 114, I would affirm the judgment of the Court of Appeals because the District Court committed statutory error when it departed below the applicable Guidelines range.

JUSTICE ALITO, dissenting.

The fundamental question in this case is whether, under the remedial decision in *United States* v. *Booker*, 543 U. S. 220 (2005), a district court must give the policy decisions that are embodied in the Sentencing Guidelines at least some significant weight in making a sentencing decision. I would answer that question in the affirmative and would therefore affirm the decision of the Court of Appeals.

I

In *Booker*, a bare majority held that the Sentencing Reform Act of 1984 (Sentencing Reform Act), as amended, 18 U. S. C. §3551 *et seq.*, 28 U. S. C. §991 *et seq.*, violated the Sixth Amendment insofar as it required district judges to follow the United States Sentencing Guidelines, but another

bare majority held that this defect could be remedied by excising the two statutory provisions, 18 U. S. C. §§3553(b)(1) and 3742(e) (2000 ed. and Supp. IV), that made compliance with the Guidelines mandatory. As a result of these two holdings, the lower federal courts were instructed that the Guidelines must be regarded as "effectively advisory," *Booker*, 543 U. S., at 245, and that individual sentencing decisions are subject to appellate review for "'reasonableness,'" *id.*, at 262. The *Booker* remedial opinion did not explain exactly what it meant by a system of "advisory" guidelines or by "reasonableness" review, and the opinion is open to different interpretations.

It is possible to read the opinion to mean that district judges, after giving the Guidelines a polite nod, may then proceed essentially as if the Sentencing Reform Act had never been enacted. This is how two of the dissents interpreted the Court's opinion. JUSTICE STEVENS wrote that sentencing judges had "regain[ed] the unconstrained discretion Congress eliminated in 1984" when it enacted the Sentencing Reform Act. *Id.*, at 297. JUSTICE SCALIA stated that "logic compels the conclusion that the sentencing judge . . . has full discretion, as full as what he possessed before the Act was passed, to sentence anywhere within the statutory range." *Id.*, at 305.

While this is a possible understanding of the remedial opinion, a better reading is that sentencing judges must still give the Guidelines' policy decisions some significant weight and that the courts of appeals must still police compliance. In a key passage, the remedial opinion stated:

> "The district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing. See 18 U. S. C. A. §§3553(a)(4), (5) (Supp. 2004). But compare *post*, at 305 (SCALIA, J., dissenting in part) (claiming that the sentencing judge has the same discretion 'he possessed before the Act was passed'). The courts of appeals review sentencing decisions for unreasonableness. These fea-

> tures of the remaining system, while not the system Congress enacted, nonetheless *continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities* while maintaining flexibility sufficient to individualize sentences where necessary." *Id.*, at 264–265 (emphasis added).

The implication of this passage is that district courts are still required to give some deference to the policy decisions embodied in the Guidelines and that appellate review must monitor compliance. District courts must not only "consult" the Guidelines, they must "take them into account." *Id.*, at 264. In addition, the passage distances the remedial majority from JUSTICE SCALIA's position that, under an advisory Guidelines scheme, a district judge would have "discretion to sentence anywhere within the ranges authorized by statute" so long as the judge "state[d] that 'this court does not believe that the punishment set forth in the Guidelines is appropriate for this sort of offense.'" *Id.*, at 305 (opinion dissenting in part).

Moreover, in the passage quoted above and at other points in the remedial opinion, the Court expressed confidence that appellate review for reasonableness would help to avoid "'excessive sentencing disparities'" and "would tend to iron out sentencing differences." *Id.*, at 263. Indeed, a major theme of the remedial opinion, as well as our decision last Term in *Rita* v. *United States*, 551 U. S. 338 (2007), was that the post-*Booker* sentencing regime would still promote the Sentencing Reform Act's goal of reducing sentencing disparities. See, *e. g.*, 551 U. S., at 348, 349, 354; *Booker*, 543 U. S., at 259–260, 263–264.

It is unrealistic to think this goal can be achieved over the long term if sentencing judges need only give lipservice to the Guidelines. The other sentencing factors set out in §3553(a) are so broad that they impose few real restraints on sentencing judges. See *id.*, at 305 (SCALIA, J., dissenting in part). Thus, if judges are obligated to do no more than consult the Guidelines before deciding upon the sentence

that is, in their independent judgment, sufficient to serve the other §3553(a) factors, federal sentencing will not "move . . . in Congress' preferred direction." *Id.*, at 264 (opinion of the Court). On the contrary, sentencing disparities will gradually increase. Appellate decisions affirming sentences that diverge from the Guidelines (such as the Court's decision today) will be influential, and the sentencing habits developed during the pre-*Booker* era will fade.

Finally, in reading the *Booker* remedial opinion, we should not forget the decision's constitutional underpinnings. *Booker* and its antecedents are based on the Sixth Amendment right to trial by jury. The Court has held that (at least under a mandatory guidelines system) a defendant has the right to have a jury, not a judge, find facts that increase the defendant's authorized sentence. See *id.*, at 230–232; *Blakely* v. *Washington*, 542 U. S. 296, 303–304 (2004). It is telling that the rules set out in the Court's opinion in the present case have nothing to do with juries or factfinding and, indeed, that not one of the facts that bears on petitioner's sentence is disputed. What is at issue, instead, is the allocation of the authority to decide issues of substantive sentencing policy, an issue on which the Sixth Amendment says absolutely nothing. The yawning gap between the Sixth Amendment and the Court's opinion should be enough to show that the *Blakely-Booker* line of cases has gone astray.

In *Blakely*, the Court drew a distinction—between judicial factfinding under a guidelines system and judicial factfinding under a discretionary sentencing system, see 542 U. S., at 309–310—that, in my judgment, cannot be defended as a matter of principle. It would be a coherent principle to hold that any fact that increases a defendant's sentence beyond the minimum required by the jury's verdict of guilt must be found by a jury. Such a holding, however, would clash with accepted sentencing practice at the time of the adoption of the Sixth Amendment. By that time, many States had

enacted criminal statutes that gave trial judges the discretion to select a sentence from within a prescribed range,[1] and the First Congress enacted federal criminal statutes that were cast in this mold. See An Act for the Punishment of certain Crimes against the United States, 1 Stat. 112.[2]

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[1] To take some examples, Connecticut, as of 1784, punished burglary and robbery without violence with imprisonment of up to 10 years "at the Discretion of the Superior Court before whom the Conviction is had." See Acts and Laws of the State of Connecticut 18 (1784). A 1749 Delaware law punished assault of a parent with imprisonment of up to 18 months. Laws of the State of Delaware 306 (1797). A 1793 Maryland law gave courts the ability to, "in their discretion, adjudge" criminal defendants "to serve and labour for any time, in their discretion, not exceeding" specified terms of years. Digest of the Laws of Maryland 196 (T. Herty ed. 1799). By 1785, Massachusetts allowed judges to sentence criminals convicted of a variety of offenses, including assault and manslaughter, "according to the aggravation of the offense," or "at the discretion of the Court." The Perpetual Laws, of the Commonwealth of Massachusetts (1788), reprinted in The First Laws of The Commonwealth of Massachusetts 244–252 (J. Cushing comp. 1981). In 1791, New Hampshire passed a law punishing certain assaults with imprisonment of up to two years, and forgery with imprisonment of up to three years, at the court's discretion. See Laws of the State of New Hampshire (1792). New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, and South Carolina likewise enacted criminal statutes providing for indeterminate sentences of imprisonment at the discretion of the court either before, or in the immediate wake of, the ratification of the Sixth Amendment. See, *e. g.*, Laws of the State of New Jersey 210–218 (1800) (detailing laws passed in 1796); 2 Laws of the State of New York 45–48, 211, 242–248, 390 (1789); Laws of the State of North Carolina 288, 389 (J. Iredell ed. 1791); An Abridgment of the Laws of Pennsylvania 1–47 (C. Read ed. 1801) (detailing laws passed 1790–1794); Public Laws of the State of Rhode Island and Providence Plantations 584–600 (1798); Public Laws of the State of South Carolina 55, 61, 257, 497 (J. Grimke ed. 1790).

[2] We have often looked to laws passed by the First Congress to aide interpretation of the Bill of Rights, which that Congress proposed. See, *e. g.*, *Harmelin* v. *Michigan*, 501 U. S. 957, 980 (1991) (opinion of SCALIA, J.) (noting, while interpreting the Eighth Amendment, that "[t]he actions of the First Congress . . . are of course persuasive evidence of what the Constitution means"); *Marsh* v. *Chambers*, 463 U. S. 783, 788–790 (1983) (looking to the actions of the First Congress in interpreting the First

Under a sentencing system of this type, trial judges inevitably make findings of fact (albeit informally) that increase sentences beyond the minimum required by the jury's verdict. For example, under a statute providing that the punishment for burglary is, say, imprisonment for up to x years, the sentencing court might increase the sentence that it would have otherwise imposed by some amount based on evidence introduced at trial that the defendant was armed or that, before committing the crime, the defendant had told a confederate that he would kill the occupants if they awakened during the burglary. The only difference between this sort of factfinding and the type that occurs under a guidelines system is that factfinding under a guidelines system is explicit and the effect of each critical finding is quantified. But in both instances, facts that cause a defendant to spend more time in prison are found by judges, not juries, and therefore no distinction can be drawn as a matter of Sixth Amendment principle.

The Court's acceptance of this distinction also produced strange collateral consequences. A sentencing system that gives trial judges the discretion to sentence within a specified range not only permits judicial factfinding that may increase a sentence, such a system also gives individual judges discretion to implement their own sentencing policies. This latter feature, whether wise or unwise, has nothing to do with the concerns of the Sixth Amendment, and a principal objective of the Sentencing Reform Act was to take this power out of the hands of individual district judges.

The *Booker* remedy, however, undid this congressional choice. In curing the Sentencing Reform Act's perceived defect regarding judicial factfinding, *Booker* restored to the district courts at least a measure of the policymaking author-

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Amendment); *Carroll* v. *United States*, 267 U. S. 132, 150–152 (1925) (looking to the actions of the First Congress in interpreting the Fourth Amendment).

ity that the Sentencing Reform Act had taken away. (How much of this authority was given back is, of course, the issue here.)

I recognize that the Court is committed to the *Blakely-Booker* line of cases, but we are not required to continue along a path that will take us further and further off course. Because the *Booker* remedial opinion may be read to require sentencing judges to give weight to the Guidelines, I would adopt that interpretation and thus minimize the gap between what the Sixth Amendment requires and what our cases have held.

II

A

Read fairly, the opinion of the Court of Appeals holds that the District Court did not properly exercise its sentencing discretion because it did not give sufficient weight to the policy decisions reflected in the Guidelines. Petitioner was convicted of a serious crime, conspiracy to distribute "ecstasy." He distributed thousands of pills and made between $30,000 and $40,000 in profit. Although he eventually left the conspiracy, he did so because he was worried about apprehension. The Sentencing Guidelines called for a term of imprisonment of 30 to 37 months, but the District Court imposed a term of probation.

Compelled to interpret the *Booker* remedial opinion, the District Court, it appears, essentially chose the interpretation outlined in JUSTICE STEVENS' and JUSTICE SCALIA's dissents. The District Court considered the sentence called for by the Guidelines, but I see no evidence that the District Court deferred to the Guidelines to any significant degree. Rather, the court determined what it thought was appropriate under the circumstances and sentenced petitioner accordingly.

If the question before us was whether a reasonable jurist could conclude that a sentence of probation was sufficient in

this case to serve the purposes of punishment set out in 18 U. S. C. §3553(a)(2), the District Court's decision could not be disturbed. But because I believe that sentencing judges must still give some significant weight to the Guidelines sentencing range, the Commission's policy statements, and the need to avoid unwarranted sentencing disparities, §§3553(a)(3), (4), and (5) (2000 ed. and Supp. V), I agree with the Eighth Circuit that the District Court did not properly exercise its discretion.

Appellate review for abuse of discretion is not an empty formality. A decision calling for the exercise of judicial discretion "hardly means that it is unfettered by meaningful standards or shielded from thorough appellate review." *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 416 (1975). Accord, *United States* v. *Taylor*, 487 U. S. 326, 336 (1988); *Franks* v. *Bowman Transp. Co.*, 424 U. S. 747, 783 (1976) (Powell, J., concurring in part and dissenting in part). And when a trial court is required by statute to take specified factors into account in making a discretionary decision, the trial court must be reversed if it "ignored or slighted a factor that Congress has deemed pertinent." *Taylor*, *supra*, at 337. See *Hensley* v. *Eckerhart*, 461 U. S. 424, 438–440 (1983) (finding an abuse of discretion where the District Court "did not properly consider" 1 of 12 factors Congress found relevant to the amount of attorney's fees when passing the Civil Rights Attorney's Fees Awards Act of 1976, 42 U. S. C. §1988). See also *United States* v. *Oakland Cannabis Buyers' Cooperative*, 532 U. S. 483, 497–498 (2001) (A court exercising its discretion "cannot 'ignore the judgment of Congress, deliberately expressed in legislation.' *Virginian R. Co.* v. *Railway Employees*, 300 U. S. 515, 551 (1937)"); *American Paper Institute, Inc.* v. *American Elec. Power Service Corp.*, 461 U. S. 402, 413 (1983) ("To decide whether [Federal Energy Regulatory Commission's] action was . . . an abuse of discretion, we must determine whether the agency ade-

quately considered the factors relevant" under the statute (internal quotation marks omitted)); *Southern S. S. Co.* v. *NLRB*, 316 U. S. 31, 46, 47 (1942) (finding an abuse of discretion where the National Labor Relations Board sought to fulfill one congressional objective but "wholly ignore[d] other and equally important Congressional objectives").

Here, the District Court "slighted" the factors set out in 18 U. S. C. §§3553(a)(3), (4), and (5) (2000 ed. and Supp. V)—namely, the Guidelines sentencing range, the Commission's policy statements, and the need to avoid unwarranted sentencing disparities. Although the Guidelines called for a prison term of at least 30 months, the District Court did not require any imprisonment—not one day. The opinion of the Court makes much of the restrictions and burdens of probation, see *ante*, at 48–49, but in the real world there is a huge difference between imprisonment and probation. If the District Court had given any appreciable weight to the Guidelines, the District Court could not have sentenced petitioner to probation without very strong countervailing considerations.

The court listed five considerations as justification for a sentence of probation: (1) petitioner's "voluntary and explicit withdrawal from the conspiracy," (2) his "exemplary behavior while on bond," (3) "the support manifested by family and friends," (4) "the lack of criminal history, especially a complete lack of any violent criminal history," and (5) his age at the time of the offense, 21. App. 97.

Two of the considerations that the District Court cited—"the support manifested by family and friends" and his age, *ibid.*—amounted to a direct rejection of the Sentencing Commission's authority to decide the most basic issues of sentencing policy. In the Sentencing Reform Act, Congress required the Sentencing Commission to consider and decide whether certain specified factors—including "age," "education," "previous employment record," "physical condition,"

"family ties and responsibilities," and "community ties"—"have any relevance to the nature [and] extent . . . of an appropriate sentence." 28 U. S. C. §994(d). These factors come up with great frequency, and judges in the pre-Sentencing Reform Act era disagreed regarding their relevance. Indeed, some of these factors were viewed by some judges as reasons for increasing a sentence and by others as reasons for decreasing a sentence. For example, if a defendant had a job, a supportive family, and friends, those factors were sometimes viewed as justifying a harsher sentence on the ground that the defendant had squandered the opportunity to lead a law-abiding life. Alternatively, those same factors were sometimes viewed as justifications for a more lenient sentence on the ground that a defendant with a job and a network of support would be less likely to return to crime. If each judge is free to implement his or her personal views on such matters, sentencing disparities are inevitable.

In response to Congress' direction to establish uniform national sentencing policies regarding these common sentencing factors, the Sentencing Commission issued policy statements concluding that "age," "family ties," and "community ties" are relevant to sentencing only in unusual cases. See United States Sentencing Commission, Guidelines Manual §§5H1.1 (age), 5H1.6 (family and community ties) (Nov. 2006). The District Court in this case did not claim that there was anything particularly unusual about petitioner's family or community ties or his age, but the court cited these factors as justifications for a sentence of probation. Although the District Court was obligated to take into account the Commission's policy statements and the need to avoid sentencing disparities, the District Court rejected Commission policy statements that are critical to the effort to reduce such disparities.

The District Court relied on petitioner's lack of criminal history, but criminal history (or the lack thereof) is a central

factor in the calculation of the Guidelines range. Petitioner was given credit for his lack of criminal history in the calculation of his Guidelines sentence. Consequently, giving petitioner additional credit for this factor was nothing more than an expression of disagreement with the policy determination reflected in the Guidelines range.

The District Court mentioned petitioner's "exemplary behavior while on bond," App. 97, but this surely cannot be regarded as a weighty factor.

Finally, the District Court was plainly impressed by petitioner's "voluntary and explicit withdrawal from the conspiracy." *Ibid.* As the Government argues, the legitimate strength of this factor is diminished by petitioner's motivation in withdrawing. He did not leave the conspiracy for reasons of conscience, and he made no effort to stop the others in the ring. He withdrew because he had become afraid of apprehension. 446 F. 3d 884, 886 (CA8 2006). While the District Court was within its rights in regarding this factor and petitioner's "self-rehabilitat[ion]," App. 75, as positive considerations, they are not enough, in light of the Guidelines' call for a 30- to 37-month prison term, to warrant a sentence of probation.

B

In reaching the opposite conclusion, the Court attacks straw men. The Court unjustifiably faults the Eighth Circuit for using what it characterizes as a "rigid mathematical formula." *Ante*, at 47. The Eighth Circuit (following a Seventh Circuit opinion) stated that a trial judge's justifications for a sentence outside the Guidelines range must be "proportional to the extent of the difference between the advisory range and the sentence imposed." 446 F. 3d, at 889 (quoting *United States* v. *Claiborne*, 439 F. 3d 479, 481 (CA8 2006), in turn quoting *United States* v. *Johnson*, 427 F. 3d 423, 426–427 (CA7 2005); internal quotation marks omitted). Taking this language literally as requiring a mathematical

computation, the Court has an easy time showing that mathematical precision is not possible:

> "[T]he mathematical approach assumes the existence of some ascertainable method of assigning percentages to various justifications. Does withdrawal from a conspiracy justify more or less than, say, a 30% reduction? . . . What percentage, if any, should be assigned to evidence that a defendant poses no future threat to society, or to evidence that innocent third parties are dependent on him?" *Ante*, at 49.

This criticism is quite unfair. It is apparent that the Seventh and Eighth Circuits did not mean to suggest that proportionality review could be reduced to a mathematical equation, and certainly the Eighth Circuit in this case did not assign numbers to the various justifications offered by the District Court. All that the Seventh and Eighth Circuits meant, I am convinced, is what this Court's opinion states, *i. e.*, that "the extent of the difference between a particular sentence and the recommended Guidelines range" is a relevant consideration in determining whether the District Court properly exercised its sentencing discretion. *Ante*, at 41.

This Court's opinion is also wrong in suggesting that the Eighth Circuit's approach was inconsistent with the abuse-of-discretion standard of appellate review. *Ante*, at 49. The Eighth Circuit stated unequivocally that it was conducting abuse-of-discretion review, 446 F. 3d, at 888–889; abuse-of-discretion review is not toothless; and it is entirely proper for a reviewing court to find an abuse of discretion when important factors—in this case, the Guidelines, policy statements, and the need to avoid sentencing disparities—are "slighted," *Taylor*, 487 U. S., at 337. The mere fact that the Eighth Circuit reversed is hardly proof that the Eighth Circuit did not apply the correct standard of review.

Because I believe that the Eighth Circuit correctly interpreted and applied the standards set out in the *Booker* remedial opinion, I must respectfully dissent.[3]

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[3]While I believe that the Court's analysis of the sentence imposed in this case does not give sufficient weight to the Guidelines, it is noteworthy that the Court's opinion does not reject the proposition that the policy decisions embodied in the Guidelines are entitled to at least some weight. The Court's opinion in this case conspicuously refrains from directly addressing that question, and the opinion in *Kimbrough* v. *United States*, *post*, p. 85, is explicitly equivocal, stating that "while the Guidelines are no longer binding, closer review may be in order when the sentencing judge varies from the Guidelines based solely on the judge's view that the Guidelines range 'fails properly to reflect §3553(a) considerations' even in a mine-run case," *post*, at 109 (quoting *Rita* v. *United States*, 551 U. S. 338, 351 (2007)).

Syllabus

WATSON *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 06–571. Argued October 9, 2007—Decided December 10, 2007

After trading a controlled substance for a pistol, petitioner Watson was indicted for, *inter alia*, violating 18 U. S. C. §924(c)(1)(A), which sets a mandatory minimum sentence, depending on the facts, for a defendant who, "during and in relation to any . . . drug trafficking crime[,] . . . uses . . . a firearm." The statute does not define "uses," but this Court has spoken to it twice. In holding that "a criminal who trades his firearm for drugs 'uses' it . . . within the meaning of §924(c)(1)," *Smith* v. *United States*, 508 U. S. 223, 241, the Court rested primarily on the "ordinary or natural meaning" of the verb in context, *id.*, at 228, understanding its common range as going beyond employment as a weapon to trading a weapon for drugs, *id.*, at 230. Later, in holding that merely possessing a firearm kept near the scene of drug trafficking is not "use" under §924(c)(1), the Court, in *Bailey* v. *United States*, 516 U. S. 137, again looked to "ordinary or natural" meaning, *id.*, at 145, deciding that "§924(c)(1) requires evidence sufficient to show an *active employment* of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate offense," *id.*, at 143. Watson pleaded guilty but reserved the right to challenge the factual basis for a §924(c)(1)(A) conviction and sentence. The Fifth Circuit affirmed on its precedent foreclosing any argument that Watson had not "used" a firearm.

Held: A person does not "use" a firearm under 18 U. S. C. §924(c)(1)(A) when he receives it in trade for drugs. Pp. 78–83.

(a) The Government's position lacks authority in either precedent or regular English. Neither *Smith*, which addressed only the trader who swaps his gun for drugs, not the trading partner who ends up with the gun, nor *Bailey*, which ruled that a gun must be made use of actively to satisfy §924(c)(1)(A), decides this case. With no statutory definition, the meaning of "uses" has to turn on "everyday meaning" revealed in phraseology that strikes the ear as "both reasonable and normal." *Smith*, *supra*, at 228, 230. When Watson handed over the drugs for the pistol, the officer "used" the pistol to get the drugs, but regular speech would not say that Watson himself used the pistol in the trade. Pp. 78–79.

(b) The Government's first effort to trump ordinary English is rejected. Noting that §924(d)(1) authorizes seizure and forfeiture of

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firearms "intended to be used in" certain crimes, the Government infers that since some of those offenses involve receipt of a firearm, "use" necessarily includes receipt of a gun even in a barter transaction. The Government's reliance on *Smith* for the proposition that the term must be given the same meaning in both subsections overreads *Smith*. The common verb "use" is not at odds in the two subsections but speaks to different issues in different voices and at different levels of specificity. Section 924(d)(1) indicates that a gun can be "used" in a receipt crime, but does not say whether both parties to a transfer use the gun, or only one, or which one; however, §924(c)(1)(A) requires just such a specific identification. Pp. 80–82.

(c) Nor is the Government's second effort to trump ordinary English persuasive. It claims that failing to treat receipt in trade as "use" would create unacceptable asymmetry with *Smith*; *i. e.*, it would be strange to penalize one side of a gun-for-drugs exchange but not the other. The problem is not with *Smith*, however, but with the limited malleability of the language it construed, and policy-driven symmetry cannot turn "receipt-in-trade" into "use." Whatever the tension between the prior result and the outcome here, law depends on respect for language and would be served better by statutory amendment than by racking statutory language to cover a policy it fails to reach. Pp. 82–83.

191 Fed. Appx. 326, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, THOMAS, BREYER, and ALITO, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment, *post*, p. 84.

Karl J. Koch argued the cause for petitioner. With him on the briefs were *Mark T. Stancil*, *David T. Goldberg*, and *Daniel R. Ortiz*.

Deanne E. Maynard argued the cause for the United States. With her on the brief were *Solicitor General Clement*, *Assistant Attorney General Fisher*, *Deputy Solicitor General Dreeben*, and *William C. Brown*.*

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*Briefs of *amici curiae* urging reversal were filed for the Gun Owners Foundation et al. by *William J. Olson*, *Herbert W. Titus*, *John S. Miles*, and *Jeremiah L. Morgan*; and for the National Association of Criminal Defense Lawyers by *Jeffrey T. Green*, *Sarah O'Rourke Schrup*, and *Pamela Harris*.

JUSTICE SOUTER delivered the opinion of the Court.

The question is whether a person who trades his drugs for a gun "uses" a firearm "during and in relation to . . . [a] drug trafficking crime" within the meaning of 18 U. S. C. § 924(c)(1)(A).[1] We hold that he does not.

I

A

Section 924(c)(1)(A) sets a mandatory minimum sentence, depending on the facts, for a defendant who, "during and in relation to any crime of violence or drug trafficking crime[,] . . . uses or carries a firearm."[2] The statute leaves the term "uses" undefined, though we have spoken to it twice before.

Smith v. *United States*, 508 U. S. 223 (1993), raised the converse of today's question, and held that "a criminal who trades his firearm for drugs 'uses' it during and in relation to a drug trafficking offense within the meaning of § 924(c)(1)." *Id.*, at 241. We rested primarily on the "ordinary or natural meaning" of the verb in context, *id.*, at 228, and understood its common range as going beyond employment as a weapon: "it is both reasonable and normal to say that petitioner 'used' his MAC–10 in his drug trafficking offense by trading it for cocaine," *id.*, at 230.

Two years later, the issue in *Bailey* v. *United States*, 516 U. S. 137 (1995), was whether possessing a firearm kept near the scene of drug trafficking is "use" under § 924(c)(1). We looked again to "ordinary or natural" meaning, *id.*, at 145, and decided that mere possession does not amount to "use": "§ 924(c)(1) requires evidence sufficient to show an *active employment* of the firearm by the defendant, a use that makes

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[1] Formerly 18 U. S. C. § 924(c)(1) (1994 ed.).

[2] Any violation of § 924(c)(1)(A), for example, demands a mandatory minimum sentence of five years. See 18 U. S. C. § 924(c)(1)(A)(i). If the firearm is brandished, the minimum goes up to 7 years, see § 924(c)(1)(A)(ii); if the firearm is discharged, the minimum jumps to 10 years, see § 924(c)(1)(A)(iii).

the firearm an operative factor in relation to the predicate offense," *id.*, at 143.[3]

B

This third case on the reach of §924(c)(1)(A) began to take shape when petitioner, Michael A. Watson, told a Government informant that he wanted to acquire a gun. On the matter of price, the informant quoted no dollar figure but suggested that Watson could pay in narcotics. Next, Watson met with the informant and an undercover law enforcement agent posing as a firearms dealer, to whom he gave 24 doses of oxycodone hydrocholoride (commonly, OxyContin) for a .50-caliber semiautomatic pistol. When law enforcement officers arrested Watson, they found the pistol in his car, and a later search of his house turned up a cache of prescription medicines, guns, and ammunition. Watson said he got the pistol "to protect his other firearms and drugs." App. C to Pet. for Cert. 11a.

A federal grand jury indicted him for distributing a Schedule II controlled substance and for "using" the pistol during and in relation to that crime, in violation of §924(c)(1)(A).[4] Watson pleaded guilty across the board, reserving the right to challenge the factual basis for a §924(c)(1)(A) conviction and the added consecutive sentence of 60 months for using the gun. The Court of Appeals affirmed, 191 Fed. Appx. 326 (CA5 2006) *(per curiam)*, on Circuit precedent foreclosing any argument that Watson had not "used" a firearm, see *id.*, at 327 (citing *United States* v. *Ulloa*, 94 F. 3d 949 (CA5 1996), and *United States* v. *Zuniga*, 18 F. 3d 1254 (CA5 1994)).

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[3] In 1998, Congress responded to *Bailey* by amending §924(c)(1). The amendment broadened the provision to cover a defendant who, "in furtherance of any [crime of violence or drug trafficking] crime, possesses a firearm." 18 U. S. C. §924(c)(1)(A). The amendment did not touch the "use" prong of §924(c)(1).

[4] The grand jury also indicted Watson as a felon in possession of a firearm, in violation of §922(g)(1). This count referred to the five firearms found in Watson's house, but not the pistol he got for the narcotics.

We granted certiorari to resolve a conflict among the Circuits on whether a person "uses" a firearm within the meaning of 18 U. S. C. §924(c)(1)(A) when he trades narcotics to obtain a gun.[5] 549 U. S. 1251 (2007). We now reverse.

II

A

The Government's position that Watson "used" the pistol under §924(c)(1)(A) by receiving it for narcotics lacks authority in either precedent or regular English. To begin with, neither *Smith* nor *Bailey* implicitly decides this case. While *Smith* held that firearms may be "used" in a barter transaction, even with no violent employment, see 508 U. S., at 241, the case addressed only the trader who swaps his gun for drugs, not the trading partner who ends up with the gun. *Bailey*, too, is unhelpful, with its rule that a gun must be made use of actively to satisfy §924(c)(1)(A), as "an operative factor in relation to the predicate offense." 516 U. S., at 143. The question here is whether it makes sense to say that Watson employed the gun at all; *Bailey* does not answer it.

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[5] Compare *United States* v. *Cotto*, 456 F. 3d 25 (CA1 2006) (trading drugs for a firearm constitutes "use" of the firearm under §924(c)(1)(A)); *United States* v. *Sumler*, 294 F. 3d 579 (CA3 2002) (same); *United States* v. *Ramirez-Rangel*, 103 F. 3d 1501 (CA9 1997) (same); *United States* v. *Ulloa*, 94 F. 3d 949 (CA5 1996) (same); *United States* v. *Cannon*, 88 F. 3d 1495 (CA8 1996) (same), with *United States* v. *Montano*, 398 F. 3d 1276 (CA11 2005) *(per curiam)* (defendant did not "use" a firearm within the meaning of §924(c)(1)(A) when he traded drugs for a firearm); *United States* v. *Stewart*, 246 F. 3d 728 (CADC 2001) (same); *United States* v. *Warwick*, 167 F. 3d 965 (CA6 1999) (same); *United States* v. *Westmoreland*, 122 F. 3d 431 (CA7 1997) (same). The Fourth Circuit has held that a defendant "used" a firearm where he gave cocaine base to a compatriot in exchange for assistance in obtaining a gun. See *United States* v. *Harris*, 39 F. 3d 1262 (1994). Subsequent unpublished opinions in that Circuit have relied on *Harris* for the proposition that the receipt of a firearm in exchange for drugs constitutes use of the firearm. See, *e. g.*, *United States* v. *Belcher*, No. 98–4845, 1999 WL 1080103 (Nov. 29, 1999) *(per curiam)*.

With no statutory definition or definitive clue, the meaning of the verb "uses" has to turn on the language as we normally speak it, see, *e. g.*, *Lopez* v. *Gonzales*, 549 U. S. 47, 53 (2006); *Asgrow Seed Co.* v. *Winterboer*, 513 U. S. 179, 187 (1995); *FDIC* v. *Meyer*, 510 U. S. 471, 476 (1994); there is no other source of a reasonable inference about what Congress understood when writing or what its words will bring to the mind of a careful reader. So, in *Smith* we looked for "everyday meaning," 508 U. S., at 228, revealed in phraseology that strikes the ear as "both reasonable and normal," *id.*, at 230. See also *Bailey*, *supra*, at 145. This appeal to the ordinary leaves the Government without much of a case.

The Government may say that a person "uses" a firearm simply by receiving it in a barter transaction, but no one else would. A boy who trades an apple to get a granola bar is sensibly said to use the apple, but one would never guess which way this commerce actually flowed from hearing that the boy used the granola. Cf. *United States* v. *Stewart*, 246 F. 3d 728, 731 (CADC 2001) ("[W]hen a person pays a cashier a dollar for a cup of coffee in the courthouse cafeteria, the customer has not used the coffee. He has only used the dollar bill"). So, when Watson handed over the drugs for the pistol, the informant or the agent[6] "used" the pistol to get the drugs, just as *Smith* held, but regular speech would not say that Watson himself used the pistol in the trade. "A seller does not 'use' a buyer's consideration," *United States* v. *Westmoreland*, 122 F. 3d 431, 436 (CA7 1997), and the Government's contrary position recalls another case; *Lopez*, *supra*, at 56, rejected the Government's interpretation of 18 U. S. C. §924(c)(2) because "we do not normally speak or write the Government's way."[7]

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[6] The record does not say which.

[7] Dictionaries confirm the conclusion. "Use" is concededly "elastic," *Smith* v. *United States*, 508 U. S. 223, 241 (1993) (SCALIA, J., dissenting), but none of its standard definitions stretch far enough to reach Watson's

B

The Government would trump ordinary English with two arguments. First, it relies on *Smith* for the pertinence of a neighboring provision, 18 U. S. C. §924(d)(1), which authorizes seizure and forfeiture of firearms "intended to be used in" certain criminal offenses listed in §924(d)(3). Some of those offenses involve receipt of a firearm,[8] from which the Government infers that "use" under §924(d) necessarily includes receipt of a gun even in a barter transaction. *Smith* is cited for the proposition that the term must be given the same meaning in both subsections, and the Government urges us to import "use" as "receipt in barter" into §924(c)(1)(A).

We agree with the Government that §924(d) calls for attention; the reference to intended use in a receipt crime carries some suggestion that receipt can be "use" (more of a hint, say, than speaking of intended "use" in a crime defined as exchange). But the suggestion is a tepid one and falls short of supporting what is really an attempt to draw a conclusion too specific from a premise too general.

The *Smith* majority rested principally on ordinary speech in reasoning that §924(c)(1) extends beyond use as a weapon and includes use as an item of barter, see 508 U. S., at 228–230, and the *Smith* opinion looks to §924(d) only for its light on that conclusion. It notes that the "intended to be used" clause of §924(d)(1) refers to offenses where "the firearm is

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conduct, see, *e. g.*, Webster's New International Dictionary of the English Language 2806 (2d ed. 1939) ("to employ"); The Random House Dictionary of the English Language 2097 (2d ed. 1987) (to "apply to one's own purposes"; "put into service; make use of"); Black's Law Dictionary 1541 (6th ed. 1990) ("[t]o avail oneself of; . . . to utilize"); see also *Smith*, *supra*, at 228–229 (listing various dictionary definitions).

[8] See, *e. g.*, 18 U. S. C. §922(j) (prohibiting, *inter alia*, the receipt of a stolen firearm in interstate commerce); §924(b) (prohibiting, *inter alia*, the receipt of a firearm in interstate commerce with the intent to commit a felony).

not used as a weapon but instead as an item of barter or commerce," *id.*, at 234, with the implication that Congress intended "use" to reach commercial transactions, not just gun violence, in § 924(d) generally, see *id.*, at 234–235. It was this breadth of treatment that led the *Smith* majority to say that, "[u]nless we are to hold that using a firearm has a different meaning in § 924(c)(1) than it does in § 924(d)—and clearly we should not—we must reject petitioner's narrow interpretation." *Id.*, at 235 (citation omitted); see also *Bailey*, *supra*, at 146 ("[U]sing a firearm should not have a different meaning in § 924(c)(1) than it does in § 924(d)" (internal quotation marks omitted)).

The Government overreads *Smith*. While the neighboring provision indicates that a firearm is "used" nonoffensively, and supports the conclusion that a gun can be "used" in barter, beyond that point its illumination fails. This is so because the utility of § 924(d)(1) is limited by its generality and its passive voice; it tells us a gun can be "used" in a receipt crime, but not whether both parties to a transfer use the gun, or only one, or which one. The nearby subsection (c)(1)(A), however, requires just such a specific identification. It provides that a person who uses a gun in the circumstances described commits a crime, whose perpetrator must be clearly identifiable in advance.

The agnosticism on the part of § 924(d)(1) about who does the using is entirely consistent with common speech's understanding that the first possessor is the one who "uses" the gun in the trade, and there is thus no cause to admonish us to adhere to the paradigm of a statute "as a symmetrical and coherent regulatory scheme, . . . in which the operative words have a consistent meaning throughout," *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, 569 (1995), or to invoke the "standard principle of statutory construction . . . that identical words and phrases within the same statute should normally be given the same meaning," *Powerex Corp.* v. *Reliant Energy Services, Inc.*, 551 U. S. 224, 232 (2007). Subsections

(d)(1) and (e)(1)(A) as we read them are not at odds over the verb "use"; the point is merely that in the two subsections the common verb speaks to different issues in different voices and at different levels of specificity. The provisions do distinct jobs, but we do not make them guilty of employing the common verb inconsistently.[9]

C

The second effort to trump regular English is the claim that failing to treat receipt in trade as "use" would create unacceptable asymmetry with *Smith*. At bottom, this atextual policy critique says it would be strange to penalize one side of a gun-for-drugs exchange but not the other: "[t]he danger to society is created not only by the person who brings the firearm to the drug transaction, but also by the drug dealer who takes the weapon in exchange for his drugs during the transaction," Brief for United States 23.

The position assumes that *Smith* must be respected, and we join the Government at least on this starting point. A difference of opinion within the Court (as in *Smith*) does not keep the door open for another try at statutory construction, where *stare decisis* has "special force [since] the legislative power is implicated, and Congress remains free to alter what we have done." *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172–173 (1989). What is more, in 14 years Congress has taken no step to modify *Smith*'s holding, and this long congressional acquiescence "has enhanced even the

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[9] For that matter, the Government's argument that "use" must always have an identical meaning in §§924(c)(1)(A) and 924(d)(1) would upend *Bailey* v. *United States*, 516 U. S. 137 (1995). One of the relevant predicate offenses referred to by §924(d)(1) is possession of "any stolen firearm . . . [in] interstate or foreign commerce." 18 U. S. C. §922(j). If we were to hold that all criminal conduct covered by the "intended to be used" clause in §924(d)(1) is "use" for purposes of §924(c)(1)(A), it would follow that mere possession is use. But that would squarely conflict with our considered and unanimous decision in *Bailey* that "'use' must connote more than mere possession of a firearm." 516 U. S., at 143.

usual precedential force" we accord to our interpretations of statutes, *Shepard* v. *United States*, 544 U. S. 13, 23 (2005).

The problem, then, is not with the sturdiness of *Smith* but with the limited malleability of the language *Smith* construed, and policy-driven symmetry cannot turn "receipt-in-trade" into "use." Whatever the tension between the prior result and the outcome here, law depends on respect for language and would be served better by statutory amendment (if Congress sees asymmetry) than by racking statutory language to cover a policy it fails to reach.

The argument is a peculiar one, in fact, given the Government's take on the current state of §924(c)(1)(A). It was amended after *Bailey* and now prohibits not only using a firearm during and in relation to a drug trafficking crime, but also possessing one "in furtherance of" such a crime. 18 U. S. C. §924(c)(1)(A); see n. 3, *supra*. The Government is confident that "a drug dealer who takes a firearm in exchange for his drugs generally will be subject to prosecution" under this new possession prong. Brief for United States 27; see Tr. of Oral Arg. 41 (Watson's case "could have been charged as possession"); cf. *United States* v. *Cox*, 324 F. 3d 77, 83, n. 2 (CA2 2003) ("For defendants charged under §924(c) after [the post-*Bailey*] amendment, trading drugs for a gun will probably result in . . . possession [in furtherance of a drug trafficking crime]"). This view may or may not prevail, and we do not speak to it today, but it does leave the appeal to symmetry underwhelming in a contest with the English language, on the Government's very terms.

* * *

Given ordinary meaning and the conventions of English, we hold that a person does not "use" a firearm under §924(c)(1)(A) when he receives it in trade for drugs. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GINSBURG, concurring in the judgment.

It is better to receive than to give, the Court holds today, at least when the subject is guns. Distinguishing, as the Court does, between trading a gun for drugs and trading drugs for a gun, for purposes of the 18 U. S. C. § 924(c)(1) enhancement, makes scant sense to me. I join the Court's judgment, however, because I am persuaded that the Court took a wrong turn in *Smith* v. *United States*, 508 U. S. 223 (1993), when it held that trading a gun for drugs fits within § 924(c)(1)'s compass as "us[e]" of a firearm "during and in relation to any . . . drug trafficking crime." For reasons well stated by JUSTICE SCALIA in his dissenting opinion in *Smith*, 508 U. S., at 241, I would read the word "use" in § 924(c)(1) to mean use as a weapon, not use in a bartering transaction. Accordingly, I would overrule *Smith*, and thereby render our precedent both coherent and consistent with normal usage. Cf. *Henslee* v. *Union Planters Nat. Bank & Trust Co.*, 335 U. S. 595, 600 (1949) (Frankfurter, J., dissenting) ("Wisdom too often never comes, and so one ought not to reject it merely because it comes late.").

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KIMBROUGH *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 06–6330. Argued October 2, 2007—Decided December 10, 2007

Under the statute criminalizing the manufacture and distribution of cocaine, 21 U. S. C. §841, and the relevant Federal Sentencing Guidelines, a drug trafficker dealing in crack cocaine is subject to the same sentence as one dealing in 100 times more powder cocaine. Petitioner Kimbrough pleaded guilty to four offenses: conspiracy to distribute crack and powder; possession with intent to distribute more than 50 grams of crack; possession with intent to distribute powder; and possession of a firearm in furtherance of a drug-trafficking offense. Under the relevant statutes, Kimbrough's plea subjected him to a minimum prison term of 15 years and a maximum of life. The applicable advisory Guidelines range was 228 to 270 months, or 19 to 22.5 years. The District Court found, however, that a sentence in this range would have been greater than necessary to accomplish the purposes of sentencing set forth in 18 U. S. C. §3553(a). In making that determination, the court relied in part on its view that Kimbrough's case exemplified the "disproportionate and unjust effect that crack cocaine guidelines have in sentencing." The court noted that if Kimbrough had possessed only powder cocaine, his Guidelines range would have been far lower: 97 to 106 months. Concluding that the statutory minimum sentence was long enough to accomplish §3553(a)'s objectives, the court sentenced Kimbrough to 15 years, or 180 months, in prison. The Fourth Circuit vacated the sentence, finding that a sentence outside the Guidelines range is *per se* unreasonable when it is based on a disagreement with the sentencing disparity for crack and powder offenses.

Held:

1. Under *United States* v. *Booker*, 543 U. S. 220, the cocaine Guidelines, like all other Guidelines, are advisory only, and the Fourth Circuit erred in holding the crack/powder disparity effectively mandatory. A district judge must include the Guidelines range in the array of factors warranting consideration, but the judge may determine that, in the particular case, a within-Guidelines sentence is "greater than necessary" to serve the objectives of sentencing, §3553(a). In making that determination, the judge may consider the disparity between the Guidelines' treatment of crack and powder offenses. Pp. 94–110.

(a) Crack and powder cocaine have the same physiological and psychotropic effects, but are handled very differently for sentencing pur-

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poses. The relevant statutes and Guidelines employ a 100-to-1 ratio that yields sentences for crack offenses three to six times longer than those for offenses involving equal amounts of powder. Thus, a major supplier of powder may receive a shorter sentence than a low-level dealer who buys powder and converts it to crack. Pp. 94–100.

(1) The crack/powder disparity originated in the Anti-Drug Abuse Act of 1986 (1986 Act), which created a two-tiered scheme of five- and ten-year mandatory minimum sentences for drug manufacturing and distribution offenses. Congress apparently adopted the 100-to-1 ratio because it believed that crack, a relatively new drug in 1986, was significantly more dangerous than powder. Thus, the 1986 Act's five-year mandatory minimum applies to any defendant accountable for 5 grams of crack or 500 grams of powder, and its ten-year mandatory minimum applies to any defendant accountable for 50 grams of crack or 5,000 grams of powder. In developing Guidelines sentences for cocaine offenses, the Sentencing Commission employed the statute's weight-driven scheme, rather than its usual empirical approach based on past sentencing practices. The statute itself specifies only two quantities of each drug, but the Guidelines used the 100-to-1 ratio to set sentences for a full range of drug quantities. Pp. 95–97.

(2) Based on additional research and experience with the 100-to-1 ratio, the Commission later determined that the crack/powder differential does not meet the objectives of the Sentencing Reform Act and the 1986 Act. The Commission also found the disparity inconsistent with the 1986 Act's goal of punishing major drug traffickers more severely than low-level dealers, and furthermore observed that the differential fosters a lack of confidence in the criminal justice system because of a perception that it promotes an unwarranted divergence based on race. Pp. 97–99.

(3) The Commission has several times sought to achieve a reduction in the crack/powder ratio. Congress rejected a 1995 amendment to the Guidelines that would have replaced the 100-to-1 ratio with a 1-to-1 ratio, but directed the Commission to propose revision of the ratio under the relevant statutes and Guidelines. Congress took no action after the Commission's 1997 and 2002 reports recommended changing the ratio. The Commission's 2007 report again urged Congress to amend the 1986 Act, but the Commission also adopted an ameliorating change in the Guidelines. The modest amendment, which became effective on November 1, 2007, yields sentences for crack offenses between two and five times longer than sentences for equal amounts of powder. The Commission thus noted that it is only a partial remedy to the problems generated by the crack/powder disparity. Pp. 99–100.

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(b) The federal sentencing statute, as modified by *Booker*, requires a court to give respectful consideration to the Guidelines, but "permits the court to tailor the sentence in light of other [§3553(a)] concerns as well," 543 U. S., at 245–246. The Government contends that the Guidelines adopting the 100-to-1 ratio are an exception to this general freedom and offers three arguments in support of its position, each of which this Court rejects. Pp. 100–108.

(1) The Government argues that the 1986 Act itself prohibits the Commission and sentencing courts from disagreeing with the 100-to-1 ratio. This position lacks grounding in the statute, which, by its terms, mandates only maximum and minimum sentences: A person convicted of possession with intent to distribute five grams or more of crack must be sentenced to a minimum of 5 years and a maximum of 40. A person with 50 grams or more of crack must be sentenced to a minimum of ten years and a maximum of life. The statute says nothing about appropriate sentences within these brackets, and this Court declines to read any implicit directive into the congressional silence. See *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 341. Drawing meaning from silence is particularly inappropriate here, because Congress knows how to direct sentencing practices in express terms. See, *e. g.*, 28 U. S. C. §994(h). This cautious reading of the 1986 Act draws force from *Neal* v. *United States*, 516 U. S. 284, which involved different methods of calculating lysergic acid diethylamide (LSD) weights: The method applicable in determining statutory minimum sentences combined the weight of the pure drug and its carrier medium, while the one controlling the calculation of Guidelines ranges presumed a lower weight for the carrier medium. This Court rejected the argument that the Guidelines and the statute should be interpreted consistently, with the Guidelines' presumptive-weight method controlling the mandatory minimum calculation. Were the Government's current position correct, the Guidelines involved in *Neal* would be in serious jeopardy. The same reasons alleged to justify reading into the 1986 Act an implicit command to the Commission and sentencing courts to apply the 100-to-1 ratio to all crack quantities could be urged in support of an argument that the 1986 Act requires the Commission to include the full weight of the carrier medium in calculating LSD weights. Yet *Neal* never questioned the Guidelines' validity, and in fact endorsed the Commission's freedom to adopt a new method. If the 1986 Act does not require the Commission to adhere to the 1986 Act's method for determining LSD weights, it does not require the Commission—or, after *Booker*, sentencing courts—to adhere to the 100-to-1 ratio for crack quantities other than those triggering the statutory mandatory minimum sentences. Pp. 102–105.

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(2) The Government also argues that Congress made clear, in disapproving the Commission's 1995 proposed Guidelines amendment, that the 1986 Act required the Commission and courts to respect the 100-to-1 ratio. But nothing in Congress' 1995 action suggested that crack sentences must exceed powder sentences by a ratio of 100 to 1. To the contrary, Congress required the Commission to recommend a revision of the ratio. The Government argues that, by calling for recommendations to change both the statute and the Guidelines, Congress meant to bar any Guidelines alteration in advance of congressional action. But the more likely reading is that Congress sought proposals to amend both the statute and the Guidelines because the Commission's criticisms of the 100-to-1 ratio concerned the exorbitance of the crack/powder disparity in both contexts. Moreover, as a result of the 2007 amendment, which Congress did not disapprove or modify, the Guidelines now deviate from the statute's 100-to-1 ratio, advancing a ratio that varies (at different offense levels) between 25 to 1 and 80 to 1. Pp. 105–106.

(3) Finally, the Government argues that if district courts are free to deviate from the Guidelines based on disagreements with the crack/powder ratio, "unwarranted sentence disparities," 18 U. S. C. §3553(a)(6), will ensue. The Government claims that, because sentencing courts remain bound by the 1986 Act's mandatory minimum sentences, deviations from the 100-to-1 ratio could result in sentencing "cliffs" around quantities triggering the mandatory minimums. For example, a district court could grant a sizable downward variance to a defendant convicted of distributing 49 grams of crack, but would be required by the statutory minimum to impose a much higher sentence for only 1 additional gram. The LSD Guidelines approved in *Neal*, however, create a similar risk of sentencing "cliffs." The Government also maintains that, if district courts are permitted to vary from the Guidelines based on their disagreement with the crack/powder disparity, defendants will receive markedly different sentences depending on the particular judge drawn for sentencing. While uniformity remains an important sentencing goal, *Booker* recognized that some departures from uniformity were a necessary cost of the remedy that decision adopted. And as to crack sentences in particular, possible variations among district courts are constrained by the 1986 Act's mandatory minimums. Moreover, to the extent that the Government correctly identifies risks of "unwarranted sentence disparities" within the meaning of §3353(a)(6), the proper solution is for district courts to take account of sentencing practices in other courts and the "cliffs" resulting from the statutory mandatory minimum sentences and weigh these disparities

against the other §3553(a) factors and any unwarranted disparities created by the crack/powder ratio itself. Pp. 106–108.

(c) *Booker* rendered the Sentencing Guidelines advisory, 543 U. S., at 245, but preserved a key role for the Sentencing Commission. In the ordinary case, the Commission's recommendation of a sentencing range will "reflect a rough approximation of sentences that might achieve §3553(a)'s objectives." *Rita* v. *United States*, 551 U. S. 338, 350. The sentencing judge, on the other hand, is "in a superior position to find facts and judge their import under §3553(a)" in each particular case. *Gall* v. *United States*, *ante*, at 51 (internal quotation marks omitted). In light of these discrete institutional strengths, a district court's decision to vary from the advisory Guidelines may attract greatest respect when the sentencing judge finds a particular case "outside the 'heartland' to which the Commission intends individual Guidelines to apply." *Rita*, 551 U. S., at 351. On the other hand, while the Guidelines are no longer binding, closer review may be in order when the sentencing judge varies from the Guidelines based solely on the judge's view that the Guidelines range "fails properly to reflect §3553(a) considerations" even in a mine-run case. *Ibid.* The crack cocaine Guidelines, however, present no occasion for elaborative discussion of this matter because those Guidelines do not exemplify the Commission's exercise of its characteristic institutional role. Given the Commission's departure from its empirical approach in formulating the crack Guidelines and its subsequent criticism of the crack/powder disparity, it would not be an abuse of discretion for a district court to conclude when sentencing a particular defendant that the crack/powder disparity yields a sentence "greater than necessary" to achieve §3553(a)'s purposes, even in a mine-run case. Pp. 108–110.

2. The 180-month sentence imposed on Kimbrough should survive appellate inspection. The District Court began by properly calculating and considering the advisory Guidelines range. It then addressed the relevant §3553(a) factors, including the Sentencing Commission's reports criticizing the 100-to-1 ratio. Finally, the court did not purport to establish a ratio of its own, but appropriately framed its final determination in line with §3553(a)'s overarching instruction to "impose a sentence sufficient, but not greater than necessary," to accomplish the sentencing goals advanced in §3553(a)(2). The court thus rested its sentence on the appropriate considerations and "committed no procedural error," *Gall*, *ante*, at 56. Kimbrough's sentence was 4.5 years below the bottom of the Guidelines range. But in determining that 15 years was the appropriate prison term, the District Court properly homed in on the particular circumstances of Kimbrough's case and accorded weight to the Sentencing Commission's consistent and emphatic

position that the crack/powder disparity is at odds with § 3553(a). Giving due respect to the District Court's reasoned appraisal, a reviewing court could not rationally conclude that the 4.5-year sentence reduction Kimbrough received qualified as an abuse of discretion. Pp. 110–111.

174 Fed. Appx. 798, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. SCALIA, J., filed a concurring opinion, *post*, p. 112. THOMAS, J., *post*, p. 114, and ALITO, J., *post*, p. 116, filed dissenting opinions.

Michael S. Nachmanoff argued the cause for petitioner. With him on the briefs were *Frances H. Pratt*, *Geremy C. Kamens*, and *Kenneth P. Troccoli*.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Fisher*, *Kannon K. Shanmugam*, *Nina Goodman*, and *Jeffrey P. Singdahlsen*.*

JUSTICE GINSBURG delivered the opinion of the Court.

This Court's remedial opinion in *United States* v. *Booker*, 543 U. S. 220, 244 (2005), instructed district courts to read the United States Sentencing Guidelines as "effectively advisory," *id.*, at 245. In accord with 18 U. S. C. § 3553(a), the Guidelines, formerly mandatory, now serve as one factor among several courts must consider in determining an appropriate sentence. *Booker* further instructed that "reason-

*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union by *Adam B. Wolf*, *Graham A. Boyd*, and *Steven R. Shapiro*; for Federal Public and Community Defenders et al. by *Mark Osler*, *Carlos A. Williams*, *Henry J. Bemporad*, *Brett G. Sweitzer*, and *David L. McColgin*; for the NAACP Legal Defense and Educational Fund, Inc., by *Ian Heath Gershengorn*, *Theodore M. Shaw*, *Jacqueline A. Berrien*, *Christina Swarns*, and *Johanna Steinberg*; for the National Association of Criminal Defense Lawyers by *Miguel A. Estrada*, *David Debold*, and *Peter Goldberger*; and for the Sentencing Project et al. by *Matthew M. Shors* and *Pammela Quinn*.

ableness" is the standard controlling appellate review of the sentences district courts impose.

Under the statute criminalizing the manufacture and distribution of crack cocaine, 21 U. S. C. §841, and the relevant Guidelines prescription, §2D1.1, a drug trafficker dealing in crack cocaine is subject to the same sentence as one dealing in 100 times more powder cocaine. The question here presented is whether, as the Court of Appeals held in this case, "a sentence . . . outside the guidelines range is per se unreasonable when it is based on a disagreement with the sentencing disparity for crack and powder cocaine offenses." 174 Fed. Appx. 798, 799 (CA4 2006) *(per curiam)*. We hold that, under *Booker*, the cocaine Guidelines, like all other Guidelines, are advisory only, and that the Court of Appeals erred in holding the crack/powder disparity effectively mandatory. A district judge must include the Guidelines range in the array of factors warranting consideration. The judge may determine, however, that, in the particular case, a within-Guidelines sentence is "greater than necessary" to serve the objectives of sentencing. 18 U. S. C. §3553(a) (2000 ed. and Supp. V). In making that determination, the judge may consider the disparity between the Guidelines' treatment of crack and powder cocaine offenses.

I

In September 2004, petitioner Derrick Kimbrough was indicted in the United States District Court for the Eastern District of Virginia and charged with four offenses: conspiracy to distribute crack and powder cocaine; possession with intent to distribute more than 50 grams of crack cocaine; possession with intent to distribute powder cocaine; and possession of a firearm in furtherance of a drug-trafficking offense. Kimbrough pleaded guilty to all four charges.

Under the relevant statutes, Kimbrough's plea subjected him to an aggregate sentence of 15 years to life in prison: 10 years to life for the three drug offenses, plus a consecutive

term of 5 years to life for the firearm offense.[1] In order to determine the appropriate sentence within this statutory range, the District Court first calculated Kimbrough's sentence under the advisory Sentencing Guidelines.[2] Kimbrough's guilty plea acknowledged that he was accountable for 56 grams of crack cocaine and 92.1 grams of powder cocaine. This quantity of drugs yielded a base offense level of 32 for the three drug charges. See United States Sentencing Commission, Guidelines Manual §2D1.1(c) (Nov. 2004) (USSG). Finding that Kimbrough, by asserting sole culpability for the crime, had testified falsely at his codefendant's trial, the District Court increased his offense level to 34. See §3C1.1. In accord with the presentence report, the court determined that Kimbrough's criminal history category was II. An offense level of 34 and a criminal history category of II yielded a Guidelines range of 168 to 210 months for the three drug charges. See *id.*, ch. 5, pt. A, Sentencing Table. The Guidelines sentence for the firearm offense was the statutory minimum, 60 months. See §2K2.4(b). Kimbrough's final advisory Guidelines range was thus 228 to 270 months, or 19 to 22.5 years.

A sentence in this range, in the District Court's judgment, would have been "greater than necessary" to accomplish the

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[1] The statutory range for possession with intent to distribute more than 50 grams of crack is ten years to life. See 21 U. S. C. §841(b)(1)(A)(iii) (2000 ed. and Supp. V). The same range applies to the conspiracy offense. See §846 (2000 ed.). The statutory range for possession with intent to distribute powder cocaine is 0 to 20 years. See §841(b)(1)(C) (Supp. V). Finally, the statutory range for possession of a firearm in furtherance of a drug-trafficking offense is five years to life. See 18 U. S. C. §924(c)(1)(A)(i). The sentences for the three drug crimes may run concurrently, see §3584(a), but the sentence for the firearm offense must be consecutive, see §924(c)(1)(A).

[2] Kimbrough was sentenced in April 2005, three months after our decision in *United States* v. *Booker*, 543 U. S. 220 (2005), rendered the Guidelines advisory. The District Court employed the version of the Guidelines effective November 1, 2004.

purposes of sentencing set forth in 18 U. S. C. §3553(a). App. 72. As required by §3553(a), the court took into account the "nature and circumstances" of the offense and Kimbrough's "history and characteristics." *Id.*, at 72–73. The court also commented that the case exemplified the "disproportionate and unjust effect that crack cocaine guidelines have in sentencing." *Id.*, at 72. In this regard, the court contrasted Kimbrough's Guidelines range of 228 to 270 months with the range that would have applied had he been accountable for an equivalent amount of powder cocaine: 97 to 106 months, inclusive of the 5-year mandatory minimum for the firearm charge, see USSG §2D1.1(c); *id.*, ch. 5, pt. A, Sentencing Table. Concluding that the statutory minimum sentence was "clearly long enough" to accomplish the objectives listed in §3553(a), the court sentenced Kimbrough to 15 years, or 180 months, in prison plus 5 years of supervised release. App. 74–75.[3]

In an unpublished *per curiam* opinion, the Fourth Circuit vacated the sentence. Under Circuit precedent, the Court of Appeals observed, a sentence "outside the guidelines range is per se unreasonable when it is based on a disagreement with the sentencing disparity for crack and powder cocaine offenses." 174 Fed. Appx., at 799 (citing *United States* v. *Eura*, 440 F. 3d 625, 633–634 (CA4 2006)).

We granted certiorari, 551 U. S. 1113 (2007), to determine whether the crack/powder disparity adopted in the United States Sentencing Guidelines has been rendered "advisory" by our decision in *Booker*.[4]

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[3]The prison sentence consisted of 120 months on each of the three drug counts, to be served concurrently, plus 60 months on the firearm count, to be served consecutively.

[4]This question has divided the Courts of Appeals. Compare *United States* v. *Pickett*, 475 F. 3d 1347, 1355–1356 (CADC 2007) (District Court erred when it concluded that it had no discretion to consider the crack/powder disparity in imposing a sentence), and *United States* v. *Gunter*, 462 F. 3d 237, 248–249 (CA3 2006) (same), with *United States* v. *Leatch*, 482 F. 3d 790, 791 (CA5 2007) *(per curiam)* (sentencing court may not

II

We begin with some background on the different treatment of crack and powder cocaine under the federal sentencing laws. Crack and powder cocaine are two forms of the same drug. Powder cocaine, or cocaine hydrochloride, is generally inhaled through the nose; it may also be mixed with water and injected. See United States Sentencing Commission, Special Report to Congress: Cocaine and Federal Sentencing Policy 5, 12 (Feb. 1995), available at http://www.ussc.gov/crack/exec.htm (hereinafter 1995 Report). (All Internet materials as visited Dec. 7, 2007, and included in Clerk of Court's case file.) Crack cocaine, a type of cocaine base, is formed by dissolving powder cocaine and baking soda in boiling water. *Id.*, at 14. The resulting solid is divided into single-dose "rocks" that users smoke. *Ibid.* The active ingredient in powder and crack cocaine is the same. *Id.*, at 9. The two forms of the drug also have the same physiological and psychotropic effects, but smoking crack cocaine allows the body to absorb the drug much faster than inhaling powder cocaine, and thus produces a shorter, more intense high. *Id.*, at 15–19.[5]

Although chemically similar, crack and powder cocaine are handled very differently for sentencing purposes. The 100-to-1 ratio yields sentences for crack offenses three to six times longer than those for powder offenses involving equal amounts of drugs. See United States Sentencing Commission, Report to Congress: Cocaine and Federal Sentencing

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impose a sentence outside the Guidelines range based on its disagreement with the crack/powder disparity), *United States* v. *Johnson*, 474 F. 3d 515, 522 (CA8 2007) (same), *United States* v. *Castillo*, 460 F. 3d 337, 361 (CA2 2006) (same), *United States* v. *Williams*, 456 F. 3d 1353, 1369 (CA11 2006) (same), *United States* v. *Miller*, 450 F. 3d 270, 275–276 (CA7 2006) (same), *United States* v. *Eura*, 440 F. 3d 625, 633–634 (CA4 2006) (same), and *United States* v. *Pho*, 433 F. 3d 53, 62–63 (CA1 2006) (same).

[5] Injecting powder cocaine produces effects similar to smoking crack cocaine, but very few powder users inject the drug. See 1995 Report 18.

Policy iv (May 2002), available at http://www.ussc.gov/r_congress/02crack/2002crackrpt.pdf (hereinafter 2002 Report).[6] This disparity means that a major supplier of powder cocaine may receive a shorter sentence than a low-level dealer who buys powder from the supplier but then converts it to crack. See 1995 Report 193–194.

A

The crack/powder disparity originated in the Anti-Drug Abuse Act of 1986 (1986 Act), 100 Stat. 3207. The 1986 Act created a two-tiered scheme of five- and ten-year mandatory minimum sentences for drug manufacturing and distribution offenses. Congress sought "to link the ten-year mandatory minimum trafficking prison term to major drug dealers and to link the five-year minimum term to serious traffickers." 1995 Report 119. The 1986 Act uses the weight of the drugs involved in the offense as the sole proxy to identify "major" and "serious" dealers. For example, any defendant responsible for 100 grams of heroin is subject to the five-year mandatory minimum, see 21 U. S. C. § 841(b)(1)(B)(i) (2000 ed. and Supp. V), and any defendant responsible for 1,000 grams of heroin is subject to the ten-year mandatory minimum, see § 841(b)(1)(A)(i).

Crack cocaine was a relatively new drug when the 1986 Act was signed into law, but it was already a matter of great public concern: "Drug abuse in general, and crack cocaine in particular, had become in public opinion and in members' minds a problem of overwhelming dimensions." 1995 Report 121. Congress apparently believed that crack was significantly more dangerous than powder cocaine in that: (1) crack was highly addictive; (2) crack users and dealers were more likely to be violent than users and dealers of

[6] As explained in Part II–C, *infra*, the Sentencing Commission amended the Guidelines and reduced sentences for crack offenses effective November 1, 2007. Except as noted, this opinion refers to the 2004 Guidelines in effect at the time of Kimbrough's sentencing.

other drugs; (3) crack was more harmful to users than powder, particularly for children who had been exposed by their mothers' drug use during pregnancy; (4) crack use was especially prevalent among teenagers; and (5) crack's potency and low cost were making it increasingly popular. See 2002 Report 90.

Based on these assumptions, the 1986 Act adopted a "100-to-1 ratio" that treated every gram of crack cocaine as the equivalent of 100 grams of powder cocaine. The 1986 Act's five-year mandatory minimum applies to any defendant accountable for 5 grams of crack or 500 grams of powder, 21 U. S. C. §841(b)(1)(B)(ii), (iii); its ten-year mandatory minimum applies to any defendant accountable for 50 grams of crack or 5,000 grams of powder, §841(b)(1)(A)(ii), (iii).

While Congress was considering adoption of the 1986 Act, the Sentencing Commission was engaged in formulating the Sentencing Guidelines.[7] In the main, the Commission developed Guidelines sentences using an empirical approach based on data about past sentencing practices, including 10,000 presentence investigation reports. See USSG §1A.1, intro. comment., pt. A, ¶3. The Commission "modif[ied] and adjust[ed] past practice in the interests of greater rationality, avoiding inconsistency, complying with congressional instructions, and the like." *Rita* v. *United States*, 551 U. S. 338, 349 (2007).

The Commission did not use this empirical approach in developing the Guidelines sentences for drug-trafficking offenses. Instead, it employed the 1986 Act's weight-driven scheme. The Guidelines use a drug quantity table based on drug type and weight to set base offense levels for drug-trafficking offenses. See USSG §2D1.1(c). In setting of-

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[7] Congress created the Sentencing Commission and charged it with promulgating the Guidelines in the Sentencing Reform Act of 1984, 98 Stat. 1987, 18 U. S. C. §3551 *et seq.* (2000 ed. and Supp. V), but the first version of the Guidelines did not become operative until November 1987, see 1995 Report iii–iv.

fense levels for crack and powder cocaine, the Commission, in line with the 1986 Act, adopted the 100-to-1 ratio. The statute itself specifies only two quantities of each drug, but the Guidelines "go further and set sentences for the full range of possible drug quantities using the same 100-to-1 quantity ratio." 1995 Report 1. The Guidelines' drug quantity table sets base offense levels ranging from 12, for offenses involving less than 250 milligrams of crack (or 25 grams of powder), to 38, for offenses involving more than 1.5 kilograms of crack (or 150 kilograms of powder). USSG §2D1.1(c).[8]

B

Although the Commission immediately used the 100-to-1 ratio to define base offense levels for all crack and powder offenses, it later determined that the crack/powder sentencing disparity is generally unwarranted. Based on additional research and experience with the 100-to-1 ratio, the Commission concluded that the disparity "fails to meet the sentencing objectives set forth by Congress in both the Sentencing Reform Act and the 1986 Act." 2002 Report 91. In a series of reports, the Commission identified three problems with the crack/powder disparity.

First, the Commission reported, the 100-to-1 ratio rested on assumptions about "the relative harmfulness of the two drugs and the relative prevalence of certain harmful conduct associated with their use and distribution that more recent research and data no longer support." *Ibid.*; see United States Sentencing Commission, Report to Congress: Cocaine and Federal Sentencing Policy 8 (May 2007), available at http://www.ussc.gov/r_congress/cocaine2007.pdf (hereinafter 2007 Report) (ratio Congress embedded in the statute far "overstate[s]" both "the relative harmfulness" of crack co-

[8] An offense level of 12 results in a Guidelines range of 10 to 16 months for a first-time offender; an offense level of 38 results in a range of 235 to 293 months for the same offender. See USSG ch. 5, pt. A, Sentencing Table.

caine, and the "seriousness of most crack cocaine offenses"). For example, the Commission found that crack is associated with "significantly less trafficking-related violence . . . than previously assumed." 2002 Report 100. It also observed that "the negative effects of prenatal crack cocaine exposure are identical to the negative effects of prenatal powder cocaine exposure." *Id.*, at 94. The Commission furthermore noted that "the epidemic of crack cocaine use by youth never materialized to the extent feared." *Id.*, at 96.

Second, the Commission concluded that the crack/powder disparity is inconsistent with the 1986 Act's goal of punishing major drug traffickers more severely than low-level dealers. Drug importers and major traffickers generally deal in powder cocaine, which is then converted into crack by street-level sellers. See 1995 Report 66–67. But the 100-to-1 ratio can lead to the "anomalous" result that "retail crack dealers get longer sentences than the wholesale drug distributors who supply them the powder cocaine from which their crack is produced." *Id.*, at 174.

Finally, the Commission stated that the crack/powder sentencing differential "fosters disrespect for and lack of confidence in the criminal justice system" because of a "widely-held perception" that it "promotes unwarranted disparity based on race." 2002 Report 103. Approximately 85 percent of defendants convicted of crack offenses in federal court are black; thus the severe sentences required by the 100-to-1 ratio are imposed "primarily upon black offenders." *Ibid.*

Despite these observations, the Commission's most recent reports do not urge identical treatment of crack and powder cocaine. In the Commission's view, "some differential in the quantity-based penalties" for the two drugs is warranted, *id.*, at 102, because crack is more addictive than powder, crack offenses are more likely to involve weapons or bodily injury, and crack distribution is associated with higher levels of crime, see *id.*, at 93–94, 101–102. But the 100-to-1 crack/

powder ratio, the Commission concluded, significantly overstates the differences between the two forms of the drug. Accordingly, the Commission recommended that the ratio be "substantially" reduced. *Id.*, at viii.

C

The Commission has several times sought to achieve a reduction in the crack/powder ratio. In 1995, it proposed amendments to the Guidelines that would have replaced the 100-to-1 ratio with a 1-to-1 ratio. Complementing that change, the Commission would have installed special enhancements for trafficking offenses involving weapons or bodily injury. See Amendments to the Sentencing Guidelines for United States Courts, 60 Fed. Reg. 25075–25077 (1995). Congress, acting pursuant to 28 U. S. C. § 994(p),[9] rejected the amendments. See Pub. L. 104–38, § 1, 109 Stat. 334. Simultaneously, however, Congress directed the Commission to "propose revision of the drug quantity ratio of crack cocaine to powder cocaine under the relevant statutes and guidelines." § 2(a)(2), *id.*, at 335.

In response to this directive, the Commission issued reports in 1997 and 2002 recommending that Congress change the 100-to-1 ratio prescribed in the 1986 Act. The 1997 Report proposed a 5-to-1 ratio. See United States Sentencing Commission, Special Report to Congress: Cocaine and Federal Sentencing Policy 2 (Apr. 1997), http://www.ussc.gov/r_congress/newcrack.pdf. The 2002 Report recommended lowering the ratio "at least" to 20 to 1. 2002 Report viii. Neither proposal prompted congressional action.

The Commission's most recent report, issued in 2007, again urged Congress to amend the 1986 Act to reduce the 100-to-1 ratio. This time, however, the Commission did not simply await congressional action. Instead, the Commission

[9] Subsection 994(p) requires the Commission to submit Guidelines amendments to Congress and provides that such amendments become effective unless "modified or disapproved by Act of Congress."

adopted an ameliorating change in the Guidelines. See 2007 Report 9. The alteration, which became effective on November 1, 2007, reduces the base offense level associated with each quantity of crack by two levels. See Amendments to the Sentencing Guidelines for United States Courts, 72 Fed. Reg. 28571–28572 (2007).[10] This modest amendment yields sentences for crack offenses between two and five times longer than sentences for equal amounts of powder. See *ibid.*[11] Describing the amendment as "only . . . a partial remedy" for the problems generated by the crack/powder disparity, the Commission noted that "[a]ny comprehensive solution requires appropriate legislative action by Congress." 2007 Report 10.

III

With this history of the crack/powder sentencing ratio in mind, we next consider the status of the Guidelines tied to the ratio after our decision in *United States* v. *Booker*, 543 U. S. 220 (2005). In *Booker*, the Court held that the mandatory Sentencing Guidelines system violated the Sixth Amendment. See *id.*, at 226–227. The *Booker* remedial opinion determined that the appropriate cure was to sever and excise the provision of the statute that rendered the

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[10] The amended Guidelines still produce sentencing ranges keyed to the mandatory minimums in the 1986 Act. Under the pre-2007 Guidelines, the 5- and 50-gram quantities that trigger the statutory minimums produced sentencing ranges that slightly *exceeded* those statutory minimums. Under the amended Guidelines, in contrast, the 5- and 50-gram quantities produce "base offense levels corresponding to guideline ranges that *include* the statutory mandatory minimum penalties." 2007 Report 9.

[11] The Commission has not yet determined whether the amendment will be retroactive to cover defendants like Kimbrough. Even under the amendment, however, Kimbrough's Guidelines range would be 195 to 218 months—well above the 180-month sentence imposed by the District Court. See Amendments to the Sentencing Guidelines for United States Courts, 72 Fed. Reg. 28571–28572 (2007); USSG ch. 5, pt. A, Sentencing Table.

Guidelines mandatory, 18 U. S. C. §3553(b)(1) (2000 ed., Supp. IV).[12] This modification of the federal sentencing statute, we explained, "makes the Guidelines effectively advisory." 543 U. S., at 245.

The statute, as modified by *Booker*, contains an overarching provision instructing district courts to "impose a sentence sufficient, but not greater than necessary," to accomplish the goals of sentencing, including "to reflect the seriousness of the offense," "to promote respect for the law," "to provide just punishment for the offense," "to afford adequate deterrence to criminal conduct," and "to protect the public from further crimes of the defendant." 18 U. S. C. §3553(a) (2000 ed. and Supp. V). The statute further provides that, in determining the appropriate sentence, the court should consider a number of factors, including "the nature and circumstances of the offense," "the history and characteristics of the defendant," "the sentencing range established" by the Guidelines, "any pertinent policy statement" issued by the Sentencing Commission pursuant to its statutory authority, and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Ibid.* In sum, while the statute still requires a court to give respectful consideration to the Guidelines, see *Gall* v. *United States*, *ante*, at 46, 49, *Booker* "permits the court to tailor the sentence in light of other statutory concerns as well," 543 U. S., at 245–246.

The Government acknowledges that the Guidelines "are now advisory" and that, as a general matter, "courts may vary [from Guidelines ranges] based solely on policy considerations, including disagreements with the Guidelines." Brief for United States 16; cf. *Rita*, 551 U. S., at 351 (a dis-

[12] The remedial opinion also severed and excised the provision of the statute requiring *de novo* review of departures from the Guidelines, 18 U. S. C. §3742(e), because that provision depended on the Guidelines' mandatory status. *Booker*, 543 U. S., at 245.

trict court may consider arguments that "the Guidelines sentence itself fails properly to reflect §3553(a) considerations"). But the Government contends that the Guidelines adopting the 100-to-1 ratio are an exception to the "general freedom that sentencing courts have to apply the [§3553(a)] factors." Brief for United States 16. That is so, according to the Government, because the ratio is a "specific policy determinatio[n] that Congress has directed sentencing courts to observe." *Id.*, at 25. The Government offers three arguments in support of this position. We consider each in turn.

A

As its first and most heavily pressed argument, the Government urges that the 1986 Act itself prohibits the Sentencing Commission and sentencing courts from disagreeing with the 100-to-1 ratio.[13] The Government acknowledges that the "Congress did not *expressly* direct the Sentencing Commission to incorporate the 100:1 ratio in the Guidelines." Brief for United States 33 (brackets and internal quotation marks omitted). Nevertheless, it asserts that the Act "[i]mplicit[ly]" requires the Commission and sentencing courts to apply the 100-to-1 ratio. *Id.*, at 32. Any deviation, the Government urges, would be "logically incoherent" when combined with mandatory minimum sentences based on the 100-to-1 ratio. *Id.*, at 33.

This argument encounters a formidable obstacle: It lacks grounding in the text of the 1986 Act. The statute, by its terms, mandates only maximum and minimum sentences: A person convicted of possession with intent to distribute five grams or more of crack cocaine must be sentenced to a mini-

[13]The Government concedes that a district court may vary from the 100-to-1 ratio if it does so "based on the individualized circumstance[s]" of a particular case. Brief for United States 45. But the Government maintains that the 100-to-1 ratio is binding in the sense that a court may not give any weight to its own view that the ratio itself is inconsistent with the §3553(a) factors.

mum of 5 years and the maximum term is 40 years. A person with 50 grams or more of crack cocaine must be sentenced to a minimum of ten years and the maximum term is life. The statute says nothing about the appropriate sentences within these brackets, and we decline to read any implicit directive into that congressional silence. See *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply . . . ."). Drawing meaning from silence is particularly inappropriate here, for Congress has shown that it knows how to direct sentencing practices in express terms. For example, Congress has specifically required the Sentencing Commission to set Guidelines sentences for serious recidivist offenders "at or near" the statutory maximum. 28 U. S. C. §994(h). See also §994(i) ("The Commission shall assure that the guidelines specify a sentence to a substantial term of imprisonment" for specified categories of offenders.).

Our cautious reading of the 1986 Act draws force from *Neal* v. *United States*, 516 U. S. 284 (1996). That case involved different methods of calculating lysergic acid diethylamide (LSD) weights, one applicable in determining statutory minimum sentences, the other controlling the calculation of Guidelines ranges. The 1986 Act sets mandatory minimum sentences based on the weight of "a mixture or substance containing a detectable amount" of LSD. 21 U. S. C. §841(b)(1)(A)(v), (B)(v). Prior to *Neal*, we had interpreted that language to include the weight of the carrier medium (usually blotter paper) on which LSD is absorbed even though the carrier is usually far heavier than the LSD itself. See *Chapman* v. *United States*, 500 U. S. 453, 468 (1991). Until 1993, the Sentencing Commission had interpreted the relevant Guidelines in the same way. That year, however, the Commission changed its approach and "instructed courts to give each dose of LSD on a carrier medium a constructive or presumed weight of 0.4 milligrams." *Neal*, 516 U. S.,

at 287 (citing USSG §2D1.1(c), n. (H) (Nov. 1995)). The Commission's change significantly lowered the Guidelines range applicable to most LSD offenses, but defendants remained subject to higher statutory minimum sentences based on the combined weight of the pure drug and its carrier medium. The defendant in *Neal* argued that the revised Guidelines and the statute should be interpreted consistently and that the "presumptive-weight method of the Guidelines should also control the mandatory minimum calculation." 516 U. S., at 287. We rejected that argument, emphasizing that the Commission had not purported to interpret the statute and could not in any event overrule our decision in *Chapman*. See 516 U. S., at 293–295.

If the Government's current position were correct, then the Guidelines involved in *Neal* would be in serious jeopardy. We have just recounted the reasons alleged to justify reading into the 1986 Act an implicit command to the Commission and sentencing courts to apply the 100-to-1 ratio to all quantities of crack cocaine. Those same reasons could be urged in support of an argument that the 1986 Act requires the Commission to include the full weight of the carrier medium in calculating the weight of LSD for Guidelines purposes. Yet our opinion in *Neal* never questioned the validity of the altered Guidelines. To the contrary, we stated: "Entrusted within its sphere to make policy judgments, the Commission may abandon its old methods in favor of what it has deemed a more desirable 'approach' to calculating LSD quantities." *Id.*, at 295.[14] If the 1986 Act does not require the Commis-

[14] At oral argument, the Government sought to distinguish *Neal* v. *United States*, 516 U. S. 284 (1996), on the ground that the validity of the amended Guidelines was not before us in that case. See Tr. of Oral Arg. 25. That is true, but only because the Government did not challenge the amendment. In fact, the Government's brief appeared to acknowledge that the Commission may legitimately deviate from the policies and methods embodied in the 1986 Act, even if the deviation produces some inconsistency. See Brief for United States in *Neal* v. *United States*, O. T. 1995, No. 94–9088, p. 26 ("When the Commission's views about sentencing

sion to adhere to the Act's method for determining LSD weights, it does not require the Commission—or, after *Booker*, sentencing courts—to adhere to the 100-to-1 ratio for crack cocaine quantities other than those that trigger the statutory mandatory minimum sentences.

B

In addition to the 1986 Act, the Government relies on Congress' disapproval of the Guidelines amendment that the Sentencing Commission proposed in 1995. Congress "not only disapproved of the 1:1 ratio," the Government urges; it also made clear "that the 1986 Act required the Commission (and sentencing courts) to take drug quantities into account, and to do so in a manner that respects the 100:1 ratio." Brief for United States 35.

It is true that Congress rejected the Commission's 1995 proposal to place a 1-to-1 ratio in the Guidelines, and that Congress also expressed the view that "the sentence imposed for trafficking in a quantity of crack cocaine should generally exceed the sentence imposed for trafficking in a like quantity of powder cocaine." Pub. L. 104–38, §2(a)(1)(A), 109 Stat. 334. But nothing in Congress' 1995 reaction to the Commission-proposed 1-to-1 ratio suggested that crack sentences must exceed powder sentences by a ratio of 100 to 1. To the contrary, Congress' 1995 action required the Commission to recommend a "revision of the drug quantity ratio of crack cocaine to powder cocaine." §2(a)(2), *id.*, at 335.

The Government emphasizes that Congress required the Commission to propose changes to the 100-to-1 ratio in *both*

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policy depart from those of Congress, it may become difficult to achieve entirely consistent sentencing, but that is a matter for Congress, not the courts, to address."). Moreover, our opinion in *Neal* assumed that the amendment was a legitimate exercise of the Commission's authority. See 516 U. S., at 294 (noting with apparent approval the Commission's position that "the Guidelines calculation is independent of the statutory calculation").

the 1986 Act and the Guidelines. This requirement, the Government contends, implicitly foreclosed any deviation from the 100-to-1 ratio in the Guidelines (or by sentencing courts) in the absence of a corresponding change in the statute. See Brief for United States 35–36. But it does not follow as the night follows the day that, by calling for recommendations to change the statute, Congress meant to bar any Guidelines alteration in advance of congressional action. The more likely reading is that Congress sought proposals to amend both the statute and the Guidelines because the Commission's criticisms of the 100-to-1 ratio, see Part II–B, *supra*, concerned the exorbitance of the crack/powder disparity in both contexts.

Moreover, as a result of the 2007 amendment, see *supra*, at 99–100, the Guidelines now advance a crack/powder ratio that varies (at different offense levels) between 25 to 1 and 80 to 1. See Amendments to the Sentencing Guidelines for United States Courts, 72 Fed. Reg. 28571–28572. Adopting the Government's analysis, the amended Guidelines would conflict with Congress' 1995 action, and with the 1986 Act, because the current Guidelines ratios deviate from the 100-to-1 statutory ratio. Congress, however, did not disapprove or modify the Commission-initiated 2007 amendment. Ordinarily, we resist reading congressional intent into congressional inaction. See *Bob Jones Univ.* v. *United States*, 461 U. S. 574, 600 (1983). But in this case, Congress failed to act on a proposed amendment to the Guidelines in a high-profile area in which it had previously exercised its disapproval authority under 28 U. S. C. § 994(p). If nothing else, this tacit acceptance of the 2007 amendment undermines the Government's position, which is itself based on implications drawn from congressional silence.

C

Finally, the Government argues that if district courts are free to deviate from the Guidelines based on disagreements

with the crack/powder ratio, unwarranted disparities of two kinds will ensue. See 18 U. S. C. §3553(a)(6) (sentencing courts shall consider "the need to avoid unwarranted sentence disparities"). First, because sentencing courts remain bound by the mandatory minimum sentences prescribed in the 1986 Act, deviations from the 100-to-1 ratio could result in sentencing "cliffs" around quantities that trigger the mandatory minimums. Brief for United States 33 (internal quotation marks omitted). For example, a district court could grant a sizable downward variance to a defendant convicted of distributing 49 grams of crack but would be required by the statutory minimum to impose a much higher sentence on a defendant responsible for only 1 additional gram. Second, the Government maintains that, if district courts are permitted to vary from the Guidelines based on their disagreement with the crack/powder disparity, "defendants with identical real conduct will receive markedly different sentences, depending on nothing more than the particular judge drawn for sentencing." *Id.*, at 40.

Neither of these arguments persuades us to hold the crack/powder ratio untouchable by sentencing courts. As to the first, the LSD Guidelines we approved in *Neal* create a similar risk of sentencing "cliffs." An offender who possesses LSD on a carrier medium weighing ten grams is subject to the ten-year mandatory minimum, see 21 U. S. C. §841(b)(1)(A)(v), but an offender whose carrier medium weighs slightly less may receive a considerably lower sentence based on the Guidelines' presumptive-weight methodology. Concerning the second disparity, it is unquestioned that uniformity remains an important goal of sentencing. As we explained in *Booker*, however, advisory Guidelines combined with appellate review for reasonableness and ongoing revision of the Guidelines in response to sentencing practices will help to "avoid excessive sentencing disparities." 543 U. S., at 264. These measures will not eliminate variations between district courts, but our opinion in *Booker* rec-

ognized that some departures from uniformity were a necessary cost of the remedy we adopted. See *id.*, at 263 ("We cannot and do not claim that use of a 'reasonableness' standard will provide the uniformity that Congress originally sought to secure [through mandatory Guidelines]."). And as to crack cocaine sentences in particular, we note a congressional control on disparities: possible variations among district courts are constrained by the mandatory minimums Congress prescribed in the 1986 Act.[15]

Moreover, to the extent that the Government correctly identifies risks of "unwarranted sentence disparities" within the meaning of 18 U. S. C. § 3553(a)(6), the proper solution is not to treat the crack/powder ratio as mandatory. Section 3553(a)(6) directs *district courts* to consider the need to avoid unwarranted disparities—along with other § 3553(a) factors—when imposing sentences. See *Gall*, *ante*, at 50, n. 6, 54. Under this instruction, district courts must take account of sentencing practices in other courts and the "cliffs" resulting from the statutory mandatory minimum sentences. To reach an appropriate sentence, these disparities must be weighed against the other § 3553(a) factors and any unwarranted disparity created by the crack/powder ratio itself.

IV

While rendering the Sentencing Guidelines advisory, *Booker*, 543 U. S., at 245, we have nevertheless preserved a key role for the Sentencing Commission. As explained in *Rita* and *Gall*, district courts must treat the Guidelines as the "starting point and the initial benchmark," *Gall*, *ante*, at 49. Congress established the Commission to formulate and constantly refine national sentencing standards. See *Rita*, 551 U. S., at 347–350. Carrying out its charge, the

[15] The Sentencing Commission reports that roughly 70 percent of crack offenders are responsible for drug quantities that yield base offense levels at or only two levels above those that correspond to the statutory minimums. See 2007 Report 25.

Commission fills an important institutional role: It has the capacity courts lack to "base its determinations on empirical data and national experience, guided by a professional staff with appropriate expertise." *United States* v. *Pruitt*, 502 F. 3d 1154, 1171 (CA10 2007) (McConnell, J., concurring); see *supra*, at 96.

We have accordingly recognized that, in the ordinary case, the Commission's recommendation of a sentencing range will "reflect a rough approximation of sentences that might achieve §3553(a)'s objectives." *Rita*, 551 U. S., at 350. The sentencing judge, on the other hand, has "greater familiarity with . . . the individual case and the individual defendant before him than the Commission or the appeals court." *Id.*, at 357–358. He is therefore "in a superior position to find facts and judge their import under §3553(a)" in each particular case. *Gall*, *ante*, at 51 (internal quotation marks omitted). In light of these discrete institutional strengths, a district court's decision to vary from the advisory Guidelines may attract greatest respect when the sentencing judge finds a particular case "outside the 'heartland' to which the Commission intends individual Guidelines to apply." *Rita*, 551 U. S., at 351. On the other hand, while the Guidelines are no longer binding, closer review may be in order when the sentencing judge varies from the Guidelines based solely on the judge's view that the Guidelines range "fails properly to reflect §3553(a) considerations" even in a mine-run case. *Ibid.* Cf. Tr. of Oral Arg. in *Gall* v. *United States*, O. T. 2007, No. 06–7949, pp. 38–39.

The crack cocaine Guidelines, however, present no occasion for elaborative discussion of this matter because those Guidelines do not exemplify the Commission's exercise of its characteristic institutional role. In formulating Guidelines ranges for crack cocaine offenses, as we earlier noted, the Commission looked to the mandatory minimum sentences set in the 1986 Act, and did not take account of "empirical data and national experience." See *Pruitt*, 502 F. 3d, at 1171

(McConnell, J., concurring). Indeed, the Commission itself has reported that the crack/powder disparity produces disproportionately harsh sanctions, *i. e.*, sentences for crack cocaine offenses "greater than necessary" in light of the purposes of sentencing set forth in §3553(a). See *supra*, at 97–98. Given all this, it would not be an abuse of discretion for a district court to conclude when sentencing a particular defendant that the crack/powder disparity yields a sentence "greater than necessary" to achieve §3553(a)'s purposes, even in a mine-run case.

V

Taking account of the foregoing discussion in appraising the District Court's disposition in this case, we conclude that the 180-month sentence imposed on Kimbrough should survive appellate inspection. The District Court began by properly calculating and considering the advisory Guidelines range. It then addressed the relevant §3553(a) factors. First, the court considered "the nature and circumstances" of the crime, see §3553(a)(1), which was an unremarkable drug-trafficking offense. App. 72–73 ("[T]his defendant and another defendant were caught sitting in a car with some crack cocaine and powder by two police officers—that's the sum and substance of it—[and they also had] a firearm."). Second, the court considered Kimbrough's "history and characteristics." §3553(a)(1). The court noted that Kimbrough had no prior felony convictions, that he had served in combat during Operation Desert Storm and received an honorable discharge from the Marine Corps, and that he had a steady history of employment.

Furthermore, the court alluded to the Sentencing Commission's reports criticizing the 100-to-1 ratio, cf. §3553(a)(5) (2000 ed., Supp. V), noting that the Commission "recognizes that crack cocaine has not caused the damage that the Justice Department alleges it has." App. 72. Comparing the Guidelines range to the range that would have applied if Kimbrough had possessed an equal amount of powder, the

court suggested that the 100-to-1 ratio itself created an unwarranted disparity within the meaning of §3553(a). Finally, the court did not purport to establish a ratio of its own. Rather, it appropriately framed its final determination in line with §3553(a)'s overarching instruction to "impose a sentence sufficient, but not greater than necessary," to accomplish the sentencing goals advanced in §3553(a)(2). See *supra*, at 101. Concluding that "the crack cocaine guidelines [drove] the offense level to a point higher than is necessary to do justice in this case," App. 72, the District Court thus rested its sentence on the appropriate considerations and "committed no procedural error," *Gall*, *ante*, at 56.

The ultimate question in Kimbrough's case is "whether the sentence was reasonable—*i. e.*, whether the District Judge abused his discretion in determining that the §3553(a) factors supported a sentence of [15 years] and justified a substantial deviation from the Guidelines range." *Ibid.* The sentence the District Court imposed on Kimbrough was 4.5 years below the bottom of the Guidelines range. But in determining that 15 years was the appropriate prison term, the District Court properly homed in on the particular circumstances of Kimbrough's case and accorded weight to the Sentencing Commission's consistent and emphatic position that the crack/powder disparity is at odds with §3553(a). See Part II–B, *supra*. Indeed, aside from its claim that the 100-to-1 ratio is mandatory, the Government did not attack the District Court's downward variance as unsupported by §3553(a). Giving due respect to the District Court's reasoned appraisal, a reviewing court could not rationally conclude that the 4.5-year sentence reduction Kimbrough received qualified as an abuse of discretion. See *Gall*, *ante*, at 58–60; *Rita*, 551 U. S., at 358–360.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the

case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, concurring.

The Court says that "closer review may be in order when the sentencing judge varies from the Guidelines based solely on the judge's view that the Guidelines range 'fails properly to reflect § 3553(a) considerations' even in a mine-run case," but that this case "present[s] no occasion for elaborative discussion of this matter." *Ante*, at 109 (quoting *Rita* v. *United States*, 551 U. S. 338, 351 (2007)). I join the opinion only because I do not take this to be an unannounced abandonment of the following clear statements in our recent opinions:

> "[Our remedial opinion] requires a sentencing court to consider Guidelines ranges, . . . but it permits the court to tailor the sentence in light of other statutory concerns as well, see § 3553(a).
>
> . . . . .
>
> "[W]ithout this provision—namely, the provision that makes 'the relevant sentencing rules . . . mandatory and impose[s] binding requirements on all sentencing judges'—the statute falls outside the scope of *Apprendi*'s requirement. . . .
>
> . . . . .
>
> "The district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing." *United States* v. *Booker*, 543 U. S. 220, 245–246, 259, 264 (2005).
>
> "Under the system described in JUSTICE BREYER's opinion for the Court in *Booker*, judges would no longer be tied to the sentencing range indicated in the Guidelines. But they would be obliged to 'take account of' that range along with the sentencing goals Congress enumerated in the [Sentencing Reform Act of 1984] at

18 U. S. C. §3553(a)." *Cunningham* v. *California*, 549 U. S. 270, 286–287 (2007).

"[The sentencing judge] may hear arguments by prosecution or defense that the Guidelines sentence should not apply, perhaps because (as the Guidelines themselves foresee) the case at hand falls outside the 'heartland' to which the Commission intends individual Guidelines to apply, USSG §5K2.0, perhaps because the Guidelines sentence itself fails properly to reflect §3553(a) considerations, or perhaps because the case warrants a different sentence regardless. See Rule 32(f). . . .

. . . . .

"A nonbinding appellate presumption that a Guidelines sentence is reasonable does not *require* the sentencing judge to impose that sentence. Still less does it *prohibit* the sentencing judge from imposing a sentence higher than the Guidelines provide for the jury-determined facts standing alone. As far as the law is concerned, the judge could disregard the Guidelines and apply the same sentence (higher than the statutory minimum or the bottom of the unenhanced Guidelines range) in the absence of the special facts (say, gun brandishing) which, in the view of the Sentencing Commission, would warrant a higher sentence within the statutorily permissible range." *Rita*, *supra*, at 351, 353.

These statements mean that the district court is free to make its own reasonable application of the §3553(a) factors, and to reject (after due consideration) the advice of the Guidelines. If there is any thumb on the scales; if the Guidelines *must* be followed even where the district court's application of the §3553(a) factors is entirely reasonable; then the "advisory" Guidelines would, over a large expanse of their application, *entitle* the defendant to a lesser sentence

but for the presence of certain additional facts found by judge rather than jury. This, as we said in *Booker*, would violate the Sixth Amendment.

JUSTICE THOMAS, dissenting.

I continue to disagree with the remedy fashioned in *United States* v. *Booker*, 543 U. S. 220, 258–265 (2005). The Court's post-*Booker* sentencing cases illustrate why the remedial majority in *Booker* was mistaken to craft a remedy far broader than necessary to correct constitutional error. The Court is now confronted with a host of questions about how to administer a sentencing scheme that has no basis in the statute. Because the Court's decisions in this area are necessarily grounded in policy considerations rather than law, I respectfully dissent.

In *Booker*, the Court held that the Federal Sentencing Guidelines violate the Sixth Amendment insofar as they permit a judge to make findings that raise a sentence beyond the level justified by the "'facts reflected in the jury verdict or admitted by the defendant.'" *Id.*, at 232 (quoting *Blakely* v. *Washington*, 542 U. S. 296, 303 (2004); emphasis deleted). In my view, this violation was more suitably remedied by requiring any such facts to be submitted to the jury. *Booker*, 543 U. S., at 323–325 (THOMAS, J., dissenting in part). That approach would have been consistent with our longstanding presumption of the severability of unconstitutional applications of statutory provisions. *Id.*, at 322–323. And it would have achieved compliance with the Sixth Amendment while doing the least amount of violence to the mandatory sentencing regime that Congress enacted. *Id.*, at 324–326. The Court, however, chose a more sweeping remedy. Despite acknowledging that under the mandatory Guidelines not "every sentence gives rise to a Sixth Amendment violation," the Court rendered the Guidelines advisory in their entirety and mandated appellate review of all sentences for "reasonableness." *Id.*, at 268. Because the Court's "solu-

tion fail[ed] to tailor the remedy to the wrong," I dissented from the remedial opinion. *Id.*, at 313.

As a result of the Court's remedial approach, we are now called upon to decide a multiplicity of questions that have no discernibly legal answers. Last Term, in *Rita* v. *United States*, 551 U. S. 338 (2007), the Court held that a Court of Appeals may treat sentences within the properly calculated Guidelines range as presumptively reasonable. Today, in *Gall* v. *United States*, *ante*, p. 38, the Court holds that a Court of Appeals may not require sentences that deviate substantially from the Guidelines range to be justified by extraordinary circumstances. And here the Court holds that sentencing courts are free to reject the Sentencing Guidelines' 100-to-1 crack-to-powder ratio.

These outcomes may be perfectly reasonable as a matter of policy, but they have no basis in law. Congress did not mandate a reasonableness standard of appellate review—that was a standard the remedial majority in *Booker* fashioned out of whole cloth. See 543 U. S., at 307–312 (SCALIA, J., dissenting in part). The Court must now give content to that standard, but in so doing it does not and cannot rely on any statutory language or congressional intent. We are asked here to determine whether, under the new advisory Guidelines regime, district courts may impose sentences based in part on their disagreement with a categorical policy judgment reflected in the Guidelines. But the Court's answer to that question necessarily derives from something other than the statutory language or congressional intent because Congress, by making the Guidelines mandatory, quite clearly intended to bind district courts to the Sentencing Commission's categorical policy judgments. See 18 U. S. C. §3553(b) (2000 ed. and Supp. V) (excised by *Booker*). By rejecting this statutory approach, the *Booker* remedial majority has left the Court with no law to apply and forced it to assume the legislative role of devising a new sentencing scheme.

Although I joined JUSTICE SCALIA in *Rita* accepting the *Booker* remedial opinion as a matter of "statutory *stare decisis*," 551 U. S., at 368 (opinion concurring in part and concurring in judgment), I am now convinced that there is no principled way to apply the *Booker* remedy—certainly not one based on the statute. Accordingly, I think it best to apply the statute as written, including 18 U. S. C. §3553(b), which makes the Guidelines mandatory. Cf. *Dickerson* v. *United States*, 530 U. S. 428, 465 (2000) (SCALIA, J., dissenting).

Applying the statute as written, it is clear that the District Court erred by departing below the mandatory Guidelines range. I would therefore affirm the judgment of the Court of Appeals vacating petitioner's sentence and remanding for resentencing.

JUSTICE ALITO, dissenting.

For the reasons explained in my dissent in *Gall* v. *United States*, *ante*, p. 61, I would hold that, under the remedial decision in *United States* v. *Booker*, 543 U. S. 220, 258–265 (2005), a district judge is still required to give significant weight to the policy decisions embodied in the Federal Sentencing Guidelines. The *Booker* remedial decision, however, does not permit a court of appeals to treat the Guidelines' policy decisions as binding. I would not draw a distinction between the Guideline at issue here and other Guidelines. Accordingly, I would vacate the decision of the Court of Appeals and remand for reconsideration.

Per Curiam

ARAVE, WARDEN *v.* HOFFMAN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 07–110. Decided January 7, 2008

Respondent was convicted of first-degree murder and sentenced to death in state court. Finding that he had received ineffective assistance of counsel during his trial's sentencing phase but not during plea bargaining, the Federal District Court subsequently granted habeas relief, ordering that he be resentenced. The Ninth Circuit affirmed the judgment with respect to sentencing and reversed with respect to plea bargaining.

Held: Respondent's motion to vacate and dismiss as moot the Ninth Circuit's judgment, to the extent it addressed his plea bargaining claim, is granted. He wishes to abandon that claim so that he may proceed with the resentencing ordered by the District Court. The Ninth Circuit is directed to instruct the District Court to dismiss the relevant claim with prejudice.

Motion granted; 455 F. 3d 926, vacated in part and remanded.

PER CURIAM.

Respondent Maxwell Hoffman was convicted of first-degree murder and sentenced to death. See *State* v. *Hoffman*, 123 Idaho 638, 851 P. 2d 934 (1993). Hoffman sought federal habeas relief on the grounds that, *inter alia*, his counsel had been ineffective during both pretrial plea bargaining and the sentencing phase of his trial. The District Court, finding that Hoffman had received ineffective assistance of counsel during sentencing but not during plea bargaining, granted Hoffman's federal habeas petition in part and ordered the State of Idaho to resentence him. Civ. Action No. 94–0200–S–BLW (Mar. 30, 2002), App. to Pet. for Cert. 38, 65. The Court of Appeals for the Ninth Circuit affirmed the District Court's decision regarding ineffective

assistance of counsel during sentencing,* but reversed with respect to the ineffective-assistance claim during plea negotiations. 455 F. 3d 926, 942 (2006). The Ninth Circuit thus granted the writ, ordering the District Court to direct the State either to release Hoffman or to "offe[r] [him] a plea agreement with the 'same material terms' offered in the original plea agreement." *Id.*, at 943. The State sought, and we granted, certiorari. *Post*, p. 1008.

Hoffman now abandons his claim that counsel was ineffective during plea bargaining. See Respondent's Motion to Vacate Decision Below and Dismiss the Cause as Moot. He "no longer seeks or desires the relief ordered by the Court of Appeals with respect to the plea offer." *Id.*, at 3. Rather, Hoffman now "wishes to withdraw his claim of ineffective assistance of counsel in connection with plea bargaining" and asks this Court to dismiss his appeal with prejudice on that issue so that he may proceed with the resentencing ordered by the District Court. *Ibid.*

The State, in its response, notes that Hoffman's requested relief is "virtually identical to the request made by the state in its Petition for Certiorari." Response to Respondent's Motion to Vacate Decision Below and Dismiss the Cause as Moot, p. 3. The State therefore agrees that the instant motion to vacate and dismiss with prejudice moots Hoffman's claim of ineffective assistance of counsel during plea negotiations and asks that the motion be granted.

We grant respondent's motion. Because his claim for ineffective assistance of counsel during pretrial plea bargaining is moot, we vacate the judgment of the Court of Appeals to the extent that it addressed that claim. The case is remanded to the United States Court of Appeals for the Ninth

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*The State initially cross-appealed the District Court's grant of Hoffman's habeas petition for ineffective assistance of counsel at sentencing. The State, however, subsequently withdrew that cross-appeal, leaving in place the District Court's order granting habeas relief as to Hoffman's death sentence. 455 F. 3d 926, 931 (CA9 2006).

Circuit with directions that it instruct the United States District Court for the District of Idaho to dismiss the relevant claim with prejudice. *Deakins* v. *Monaghan*, 484 U. S. 193, 200–201 (1988); *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 39–40 (1950).

It is so ordered.

Per Curiam

WRIGHT, SHERIFF, SHAWANO COUNTY, WISCONSIN *v.* VAN PATTEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 07–212. Decided January 7, 2008

Respondent Van Patten sought habeas relief under 28 U. S. C. §2254, arguing that his Sixth Amendment right to counsel was violated because his trial counsel, though linked to the courtroom by speakerphone, was physically absent from his state plea hearing. The District Court denied relief, but the Seventh Circuit reversed, holding that the case's novel claim should be resolved under *United States* v. *Cronic*, 466 U. S. 648 (prejudice may be presumed), rather than *Strickland* v. *Washington*, 466 U. S. 668 (requiring a showing of counsel's deficient performance and prejudice to defendant). This Court remanded in light of *Carey* v. *Musladin*, 549 U. S. 70, and its explanation of §2254's "clearly established Federal law" requirement. The Seventh Circuit reaffirmed, holding that this case, unlike *Musladin*, does not involve an open constitutional question since this Court has recognized a defendant's right to relief if his counsel was actually or constructively absent at a critical stage of the proceeding.

Held: Because this Court's precedents give no clear answer to the question presented in this case, it cannot be said that the state court unreasonably applied clearly established federal law, and therefore, §2254 relief is unauthorized. *Strickland*'s two-pronged test typically applies to ineffective-assistance-of-counsel claims, but *Cronic* held that test unnecessary when "circumstances [exist] that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified," 466 U. S., at 658, and found that one such circumstance is counsel's total absence during a critical stage of the proceeding. However, no decision of this Court squarely addresses the issue in this case, clearly establishes that *Cronic* should replace *Strickland* in this novel factual context, or clearly holds that counsel's participation by speakerphone should be treated on par with total absence.

Certiorari granted; 489 F. 3d 827, reversed and remanded.

PER CURIAM.

The Court of Appeals for the Seventh Circuit held that respondent Joseph Van Patten was entitled to relief under

28 U. S. C. § 2254, reasoning that his lawyer's assistance was presumptively ineffective owing to his participation in a plea hearing by speakerphone. *Van Patten* v. *Deppisch*, 434 F. 3d 1038 (2006). We granted certiorari, vacated the judgment, and remanded the case for further consideration in light of *Carey* v. *Musladin*, 549 U. S. 70 (2006). On remand, the Seventh Circuit adhered to its original decision, concluding that "[n]othing in *Musladin* requires that our 2006 opinion be changed." *Van Patten* v. *Endicott*, 489 F. 3d 827, 828 (2007) *(per curiam)*. We grant the petition for certiorari now before us and this time reverse the judgment of the Seventh Circuit.

I

Van Patten was charged with first-degree intentional homicide and pleaded no contest to a reduced charge of first-degree reckless homicide. His counsel was not physically present at the plea hearing but was linked to the courtroom by speakerphone. After the state trial court imposed the maximum term of 25 years in prison, Van Patten retained different counsel and moved in the Wisconsin Court of Appeals to withdraw his no-contest plea. The thrust of the motion was that Van Patten's Sixth Amendment right to counsel had been violated by his trial counsel's physical absence from the plea hearing. The Wisconsin Court of Appeals noted that, under state law, a postconviction motion to withdraw a no-contest plea will be granted only if a defendant establishes "manifest injustice" by clear and convincing evidence. See *State* v. *Van Pattten*, No. 96–3036–CR (May 28, 1997), App. to Pet. for Cert. A47–A48. While the court acknowledged that "the violation of the defendant's Sixth Amendment right to counsel may constitute a manifest injustice," *id.*, at A48, it found that the absence of Van Patten's lawyer from the plea hearing did not violate his right to counsel:

> "The plea hearing transcript neither indicates any deficiency in the plea colloquy, nor suggests that Van Pat-

> ten's attorney's participation by telephone interfered in any way with [Van Patten's] ability to communicate with his attorney about his plea. Van Patten confirmed that he had thoroughly discussed his case and plea decision with his attorney and was satisfied with the legal representation he had received. The court gave Van Patten the opportunity to speak privately with his attorney over the phone if he had questions about the plea, but Van Patten declined. Further, when Van Patten exercised his right to allocution at sentencing, in the personal presence of his attorney, he raised no objection to his plea." *Id.*, at A49–A50.

Applying *Strickland* v. *Washington*, 466 U. S. 668 (1984), the court concluded that "[t]he record does not support, nor does Van Patten's appellate brief include, any argument that counsel's performance was deficient or prejudicial," No. 96–3036–CR, App. to Pet. for Cert. A51, and denied Van Patten's motion.

After the Wisconsin Supreme Court declined further review, Van Patten petitioned for a writ of habeas corpus under 28 U. S. C. §2254 in Federal District Court. The District Court denied relief, but the Court of Appeals for the Seventh Circuit reversed. It held that Van Patten's Sixth Amendment claim should have been resolved, not under *Strickland*'s two-pronged test (which requires a showing of deficient performance and prejudice to the defendant), but under the standard discussed in *United States* v. *Cronic*, 466 U. S. 648 (1984) (under which prejudice may be presumed). Although the Seventh Circuit recognized that this case "presents [a] novel . . . question," *Deppisch*, 434 F. 3d, at 1040, and conceded that "[u]nder *Strickland*, it seems clear [that] Van Patten would have no viable claim," *id.*, at 1042, the court concluded that "it is clear to us that Van Patten's case must be resolved under *Cronic*," *id.*, at 1043. The resolution was in Van Patten's favor.

While the prison warden's petition for certiorari was pending, this Court decided *Musladin*, *supra*. Musladin had invoked this Court's cases recognizing "that certain courtroom practices are so inherently prejudicial that they deprive the defendant of a fair trial," *id.*, at 72. The issue was the significance of these precedents in a case under § 2254, which bars relief on any claim "adjudicated on the merits" in state court, unless the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d)(1).

The prejudicial conduct involved in *Musladin* was courtroom conduct of private actors. We held that the "inheren[t] prejudic[e]" test, which we thus far have applied only in cases involving government-sponsored conduct, see, *e. g.*, *Estelle* v. *Williams*, 425 U. S. 501 (1976); *Holbrook* v. *Flynn*, 475 U. S. 560 (1986), did not clearly extend to the conduct of independently acting courtroom spectators. See *Musladin*, *supra*, at 76 ("[A]lthough the Court articulated the test for inherent prejudice that applies to state conduct in *Williams* and *Flynn*, we have never applied that test to spectators' conduct. Indeed, part of the legal test of *Williams* and *Flynn*—asking whether the practices furthered an essential *state* interest—suggests that those cases apply only to state-sponsored practices"). For that reason, we reversed the Court of Appeals' grant of habeas relief.

Musladin's explanation of the "clearly established Federal law" requirement prompted us to remand Van Patten's case to the Seventh Circuit for further consideration. A majority of the panel reaffirmed its original judgment, however, on the ground that "[u]nlike *Musladin*, this case does not concern an open constitutional question," because "[t]he Supreme Court has long recognized a defendant's right to relief if his defense counsel was actually or constructively absent at a critical stage of the proceedings." 489 F. 3d, at 828.

Judge Coffey disagreed, observing that "the United States Supreme Court has never held that an attorney is presumed to be ineffective if he participates in a plea hearing by speaker phone rather than by physical appearance." *Ibid.* (emphasis deleted). He found that "[t]he Majority Opinion does not comport with *Musladin*," *ibid.*, and dissented from "the court's erroneous decision to allow" its original opinion "to stand as written," *id.*, at 829. We reach the same conclusion.

II

Strickland, *supra*, ordinarily applies to claims of ineffective assistance of counsel at the plea hearing stage. See *Hill* v. *Lockhart*, 474 U. S. 52, 58 (1985) ("[T]he two-part *Strickland* v. *Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel"). And it was in a different context that *Cronic* "recognized a narrow exception to *Strickland*'s holding that a defendant who asserts ineffective assistance of counsel must demonstrate not only that his attorney's performance was deficient, but also that the deficiency prejudiced the defense." *Florida* v. *Nixon*, 543 U. S. 175, 190 (2004) (discussing *Cronic*). *Cronic* held that a Sixth Amendment violation may be found "without inquiring into counsel's actual performance or requiring the defendant to show the effect it had on the trial," *Bell* v. *Cone*, 535 U. S. 685, 695 (2002), when "circumstances [exist] that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified," *Cronic*, *supra*, at 658. *Cronic*, not *Strickland*, applies "when . . . the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial," 466 U. S., at 659–660,* and

**Cronic* also applies when "there [is] a breakdown in the adversarial process," 466 U. S., at 662, such that "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing," *id.*, at 659. We have made clear that "[w]hen we spoke in *Cronic* of the possibility of

one circumstance warranting the presumption is the "complete denial of counsel," that is, when "counsel [is] either totally absent, or prevented from assisting the accused during a critical stage of the proceeding," *id.*, at 659, and n. 25.

No decision of this Court, however, squarely addresses the issue in this case, see *Deppisch*, 434 F. 3d, at 1040 (noting that this case "presents [a] novel . . . question"), or clearly establishes that *Cronic* should replace *Strickland* in this novel factual context. Our precedents do not clearly hold that counsel's participation by speakerphone should be treated as a "complete denial of counsel," on par with total absence. Even if we agree with Van Patten that a lawyer physically present will tend to perform better than one on the phone, it does not necessarily follow that mere telephone contact amounted to total absence or "prevented [counsel] from assisting the accused," so as to entail application of *Cronic*. The question is not whether counsel in those circumstances will perform less well than he otherwise would, but whether the circumstances are likely to result in such poor performance that an inquiry into its effects would not be worth the time. Cf. *United States* v. *Gonzalez-Lopez*, 548 U. S. 140, 147 (2006) (Sixth Amendment ensures "*effective* (not mistake-free) representation" (emphasis in original)). Our cases provide no categorical answer to this question, and for that matter the several proceedings in this case hardly point toward one. The Wisconsin Court of Appeals held counsel's performance by speakerphone to be constitutionally effective; neither the Magistrate Judge, the District Court, nor the Seventh Circuit disputed this conclusion; and the Seventh Circuit itself stated that "[u]nder *Strickland*, it seems clear Van Patten would have no viable claim," *Deppisch*, *supra*, at 1042.

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presuming prejudice based on an attorney's failure to test the prosecutor's case, we indicated that the attorney's failure must be complete." *Bell* v. *Cone*, 535 U. S. 685, 696–697 (2002). It is undisputed that this standard has not been met here.

Because our cases give no clear answer to the question presented, let alone one in Van Patten's favor, "it cannot be said that the state court 'unreasonabl[y] appli[ed] clearly established Federal law.'" *Musladin*, 549 U. S., at 77 (quoting 28 U. S. C. §2254(d)(1)). Under the explicit terms of §2254(d)(1), therefore, relief is unauthorized.

* * *

Petitioner tells us that "[i]n urging review, [the State] does not condone, recommend, or encourage the practice of defense counsel assisting clients by telephone rather than in person at court proceedings, even in nonadversarial hearings such as the plea hearing in this case," Pet. for Cert. 5, and he acknowledges that "[p]erhaps, under similar facts in a direct federal appeal, the Seventh Circuit could have properly reached the same result it reached here," *ibid.* Our own consideration of the merits of telephone practice, however, is for another day, and this case turns on the recognition that no clearly established law contrary to the state court's conclusion justifies collateral relief.

The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, concurring in the judgment.

An unfortunate drafting error in the Court's opinion in *United States* v. *Cronic*, 466 U. S. 648 (1984), makes it necessary to join the Court's judgment in this case.

In *Cronic*, this Court explained that some violations of the right to counsel arise in "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." *Id.*, at 658. One such circumstance exists when the accused is "denied the presence of counsel at a critical stage of the prosecution." *Id.*, at 662. We noted that the "presence" of lawyers "is essential

because they are the means through which the other rights of the person on trial are secured." *Id.*, at 653. Regrettably, *Cronic* did not "clearly establis[h]" the full scope of the defendant's right to the presence of an attorney. See 28 U. S. C. § 2254(d)(1).

The Court of Appeals apparently read "the presence of counsel" in *Cronic* to mean "the presence of counsel *in open court*." Initially, all three judges on the panel assumed that the constitutional right at stake was the right to have counsel by one's side at all critical stages of the proceeding.*

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*In his opinion for a unanimous panel, Judge Evans explained at length why respondent had not had the assistance of counsel at a critical stage of the proceeding—the plea hearing—which resulted in a sentence of imprisonment for 25 years. He wrote, in part:

"The Sixth Amendment's right-to-counsel guarantee recognizes 'the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty.' *Johnson v. Zerbst*, 304 U. S. 458, 462–63 . . . (1938). 'Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have.' *Cronic*, 466 U. S. at 654 . . . (citation omitted). Thus, a defendant requires an attorney's 'guiding hand' through every stage of the proceedings against him. *Powell v. Alabama*, 287 U. S. 45, 53 . . . (1932); *Cronic*, 466 U. S. at 658 . . . . It is well-settled that a court proceeding in which a defendant enters a plea (a guilty plea or, as here, a plea of no contest) is a 'critical stage' where an attorney's presence is crucial because 'defenses may be . . . irretrievably lost, if not then and there asserted.' *Hamilton v. Alabama*, 368 U. S. 52, 54 . . . (1961). *See also White v. Maryland*, 373 U. S. 59, 60 . . . (1963); *United States ex rel. Thomas v. O'Leary*, 856 F. 2d 1011, 1014 (7th Cir. 1988). Indeed, with plea bargaining the norm and trial the exception, for most criminal defendants a change of plea hearing is *the* critical stage of their prosecution.

"In deciding whether to dispense with the two-part *Strickland* [v. *Washington*, 466 U. S. 668 (1984),] inquiry, a court must evaluate whether the 'surrounding circumstances make it unlikely that the defendant could have received the effective assistance of counsel,' *Cronic*, 466 U. S. at 666, . . . and thus 'justify a presumption that [the] conviction was insufficiently reliable to satisfy the Constitution,' *id.* at 662 . . . . In this case, although the transcript shows that the state trial judge did his best to conduct the plea colloquy with care, the arrangements made it impossible for Van Pat-

See also *Van Patten* v. *Deppisch*, No. 04–1276, 2006 U. S. App. LEXIS 5147 (CA7, Feb. 27, 2006) (noting that no member of the Seventh Circuit requested a vote on the warden's petition for rehearing en banc). In my view, this interpretation is correct. The fact that in 1984, when *Cronic* was decided, neither the parties nor the Court contemplated representation by attorneys who were not present in the flesh explains the author's failure to add the words "in open court" after the word "present."

As the Court explains today, however, the question is not the reasonableness of the federal court's interpretation of *Cronic*, but rather whether the Wisconsin court's narrower reading of that opinion was "objectively unreasonable." *Williams* v. *Taylor*, 529 U. S. 362, 409 (2000). In light of *Cronic*'s references to the "complete denial of counsel" and "totally absent" counsel, 466 U. S., at 659, and n. 25, and the opinion's failure to state more explicitly that the defendant is entitled to "the presence of counsel [in open court]," *id.*, at 662, I acquiesce in this Court's conclusion that the state-court decision was not an unreasonable application of clearly

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ten to have the 'assistance of counsel' in anything but the most perfunctory sense. Van Patten stood alone before judge and prosecutor. Unlike the usual defendant in a criminal case, he could not turn to his lawyer for private legal advice, to clear up misunderstandings, to seek reassurance, or to discuss any last-minute misgivings. Listening over an audio connection, counsel could not detect and respond to cues from his client's demeanor that might have indicated he did not understand certain aspects of the proceeding, or that he was changing his mind. If Van Patten wished to converse with his attorney, anyone else in the courtroom could effectively eavesdrop. (We assume the district attorney would balk if he were expected to conduct last-minute consultations with his staff via speakerphone in open court, 'on the record,' with the defendant taking in every word.) No advance arrangements had been made for a private line in a private place, and even if one could 'perhaps' have been provided, it would have required a special request by Van Patten and, apparently, a break in the proceedings. In short, this was not an auspicious setting for someone about to waive very valuable constitutional rights." *Van Patten* v. *Deppisch*, 434 F. 3d 1038, 1042–1043 (CA7 2006).

established federal law. In doing so, however, I emphasize that today's opinion does not say that the state courts' interpretation of *Cronic* was correct, or that we would have accepted that reading if the case had come to us on direct review rather than by way of 28 U. S. C. §2254. See *ante*, at 126; see also *Williams*, 529 U. S., at 410 ("[A]n *unreasonable* application of federal law is different from an *incorrect* application of federal law").

Syllabus

JOHN R. SAND & GRAVEL CO. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 06–1164. Argued November 6, 2007—Decided January 8, 2008

In a Court of Federal Claims action, petitioner argued that various federal activities on land for which it held a mining lease amounted to an unconstitutional taking of its leasehold rights. The Government initially asserted that the claims were untimely under the court of claims statute of limitations, but later effectively conceded that issue and won on the merits. Although the Government did not raise timeliness on appeal, the Federal Circuit addressed the issue *sua sponte*, finding the action untimely.

Held: The court of claims statute of limitations requires *sua sponte* consideration of a lawsuit's timeliness, despite the Government's waiver of the issue. Pp. 133–139.

(a) This Court has long interpreted the statute as setting out a more absolute, "jurisdictional" limitations period. For example, in 1883, the Court concluded with regard to the current statute's predecessor that "it [was] the duty of the court to raise the [timeliness] question whether it [was] done by plea or not." *Kendall* v. *United States*, 107 U. S. 123, 125–126. See also *Finn* v. *United States*, 123 U. S. 227, and *Soriano* v. *United States*, 352 U. S. 270. That the statute's language has changed slightly since 1883 makes no difference here, for there has been no expression of congressional intent to change the underlying substantive law. Pp. 133–136.

(b) Thus, petitioner can succeed only by convincing the Court that it has overturned, or should overturn, its earlier precedent. Pp. 136–139.

(1) The Court did not do so in *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, where it applied equitable tolling to a limitations statute governing employment discrimination claims against the Government. While the *Irwin* Court noted the similarity of that statute to the court of claims statute, the civil rights statute is unlike the present statute in the key respect that the Court had not previously provided a definitive interpretation. Moreover, the *Irwin* Court mentioned *Soriano*, which reflects the particular interpretive history of the court of claims statute, but said nothing about overturning it or any other case in that line. Finally, just as an equitable tolling presumption

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could be rebutted by statutory language demonstrating Congress' contrary intent, it should be rebutted by a definitive earlier interpretation finding a similar congressional intent. Language in *Franconia Associates* v. *United States*, 536 U. S. 129, 145, describing the court of claims statute as "unexceptional" and citing *Irwin* for the proposition "that limitations principles should generally apply to the Government in the same way that they apply to private parties" refers only to the statute's claims-accrual rule and adds little or nothing to petitioner's contention that *Irwin* overruled earlier cases. Pp. 136–138.

(2) *Stare decisis* principles require rejection of petitioner's argument that the Court should overturn *Kendall*, *Finn*, *Soriano*, and related cases. Any anomaly such old cases and *Irwin* together create is not critical, but simply reflects a different judicial assumption about the comparative weight Congress would likely have attached to competing national interests. Moreover, the earlier cases do not produce "unworkable" law, see, *e. g.*, *United States* v. *International Business Machines Corp.*, 517 U. S. 843, 856. *Stare decisis* in respect to statutory interpretation also has "special force." Congress, which "remains free to alter what [the Court has] done," *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172–173, has long acquiesced in the interpretation given here. Finally, even if the Government cannot show detrimental reliance on the earlier cases, reexamination of well-settled precedent could nevertheless prove harmful. Overturning a decision on the belief that it is no longer "right" would inevitably reflect a willingness to reconsider others, and such willingness could itself threaten to substitute disruption, confusion, and uncertainty for necessary legal stability. Pp. 138–139.

457 F. 3d 1345, affirmed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, SOUTER, THOMAS, and ALITO, JJ., joined. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 140. GINSBURG, J., filed a dissenting opinion, *post*, p. 144.

Jeffrey K. Haynes argued the cause for petitioner. With him on the briefs were *Keith C. Jablonski* and *Gregory C. Sisk*.

Malcolm L. Stewart argued the cause for the United States. With him on the brief were *Solicitor General*

Clement, Acting Assistant Attorney General Tenpas, Deputy Solicitor General Kneedler, and *Aaron P. Avila.**

JUSTICE BREYER delivered the opinion of the Court.

The question presented is whether a court must raise on its own the timeliness of a lawsuit filed in the Court of Federal Claims, despite the Government's waiver of the issue. We hold that the special statute of limitations governing the Court of Federal Claims requires that *sua sponte* consideration.

I

Petitioner John R. Sand & Gravel Company filed an action in the Court of Federal Claims in May 2002. The complaint explained that petitioner held a 50-year mining lease on certain land. And it asserted that various Environmental Protection Agency activities on that land (involving, *e. g.*, the building and moving of various fences) amounted to an unconstitutional taking of its leasehold rights.

The Government initially asserted that petitioner's several claims were all untimely in light of the statute providing that "[e]very claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues." 28 U. S. C. §2501. Later, however, the Government effectively conceded that certain claims were timely. See App. 37a–39a (Government's pretrial brief). The Government subsequently won on the merits. See 62 Fed. Cl. 556, 589 (2004).

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*Briefs of *amici curiae* urging reversal were filed for the National Association of Home Builders by *Duane J. Desiderio* and *Thomas J. Ward;* and for the Pacific Legal Foundation by *Diana M. Kirchheim* and *James S. Burling.*

Thomas C. Goldstein, Patricia A. Millett, Robert Huffman, and *Steven C. Nadeau* filed a brief for the Metamora Group as *amicus curiae* urging affirmance.

Petitioner appealed the adverse judgment to the Court of Appeals for the Federal Circuit. See 457 F. 3d 1345, 1346 (2006). The Government's brief said nothing about the statute of limitations, but an *amicus* brief called the issue to the court's attention. See *id.*, at 1352. The court considered itself obliged to address the limitations issue, and it held that the action was untimely. *Id.*, at 1353–1360. We subsequently agreed to consider whether the Court of Appeals was right to ignore the Government's waiver and to decide the timeliness question. 550 U. S. 968 (2007).

II

Most statutes of limitations seek primarily to protect defendants against stale or unduly delayed claims. See, *e. g.*, *United States* v. *Kubrick*, 444 U. S. 111, 117 (1979). Thus, the law typically treats a limitations defense as an affirmative defense that the defendant must raise at the pleadings stage and that is subject to rules of forfeiture and waiver. See Fed. Rules Civ. Proc. 8(c)(1), 12(b), 15(a); *Day* v. *McDonough*, 547 U. S. 198, 202 (2006); *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 393 (1982). Such statutes also typically permit courts to toll the limitations period in light of special equitable considerations. See, *e. g.*, *Rotella* v. *Wood*, 528 U. S. 549, 560–561 (2000); *Zipes*, *supra*, at 393; see also *Cada* v. *Baxter Healthcare Corp.*, 920 F. 2d 446, 450–453 (CA7 1990).

Some statutes of limitations, however, seek not so much to protect a defendant's case-specific interest in timeliness as to achieve a broader system-related goal, such as facilitating the administration of claims, see, *e. g.*, *United States* v. *Brockamp*, 519 U. S. 347, 352–353 (1997), limiting the scope of a governmental waiver of sovereign immunity, see, *e. g.*, *United States* v. *Dalm*, 494 U. S. 596, 609–610 (1990), or promoting judicial efficiency, see, *e. g.*, *Bowles* v. *Russell*, 551 U. S. 205, 210–213 (2007). The Court has often read the time limits of these statutes as more absolute, say, as requir-

ing a court to decide a timeliness question despite a waiver, or as forbidding a court to consider whether certain equitable considerations warrant extending a limitations period. See, *e. g.*, *id.*, at 212–213; see also *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 514 (2006). As convenient shorthand, the Court has sometimes referred to the time limits in such statutes as "jurisdictional." See, *e. g.*, *Bowles*, *supra*, at 210.

This Court has long interpreted the court of claims limitations statute as setting forth this second, more absolute, kind of limitations period.

A

In *Kendall* v. *United States*, 107 U. S. 123 (1883), the Court applied a predecessor of the current 6-year bar to a claim that had first accrued in 1865 but that the plaintiff did not bring until 1872. *Id.*, at 124; see also Act of Mar. 3, 1863, § 10, 12 Stat. 767 (Rev. Stat. § 1069). The plaintiff, a former Confederate States employee, had asked for equitable tolling on the ground that he had not been able to bring the suit until Congress, in 1868, lifted a previously imposed legal disability. See 107 U. S., at 124–125. But the Court denied the request. *Id.*, at 125–126. It did so not because it thought the equities ran against the plaintiff, but because the statute (with certain listed exceptions) did not permit tolling. Justice Harlan, writing for the Court, said the statute was "jurisdiction[al]," that it was not susceptible to judicial "engraft[ing]" of unlisted disabilities such as "sickness, surprise, or inevitable accident," and that "*it [was] the duty of the court to raise the [timeliness] question whether it [was] done by plea or not.*" *Ibid.* (emphasis added).

Four years later, in *Finn* v. *United States*, 123 U. S. 227 (1887), the Court found untimely a claim that had originally been filed with a Government agency, but which that agency had then voluntarily referred by statute to the Court of Claims. *Id.*, at 229–230 (citing Act of June 25, 1868, § 7, 15 Stat. 76); see also Rev. Stat. §§ 1063–1065. That Government reference, it might have been argued, amounted to a

waiver by the Government of any limitations-based defense. Cf. *United States* v. *Lippitt*, 100 U. S. 663, 669 (1880) (reserving the question of the time bar's application in such circumstances). The Court nonetheless held that the long (over 10-year) delay between the time the claim accrued and the plaintiff's filing of the claim before the agency made the suit untimely. *Finn*, 123 U. S., at 232. And as to any argument of Government waiver or abandonment of the time-bar defense, Justice Harlan, again writing for the Court, said that the ordinary legal principle that "limitation . . . is a defence [that a defendant] must plead . . . *has no application to suits in the Court of Claims against the United States*." *Id.*, at 232–233 (emphasis added).

Over the years, the Court has reiterated in various contexts this or similar views about the more absolute nature of the court of claims limitations statute. See *Soriano* v. *United States*, 352 U. S. 270, 273–274 (1957); *United States* v. *Greathouse*, 166 U. S. 601, 602 (1897); *United States* v. *New York*, 160 U. S. 598, 616–619 (1896); *De Arnaud* v. *United States*, 151 U. S. 483, 495–496 (1894).

B

The statute's language has changed slightly since *Kendall* was decided in 1883, but we do not see how any changes in language make a difference here. The only arguably pertinent linguistic change took place during the 1948 recodification of Title 28. See § 2501, 62 Stat. 976. Prior to 1948, the statute said that "[e]very claim . . . *cognizable by* the Court of Claims, shall be forever barred" unless filed within six years of the time it first accrues. Rev. Stat. § 1069 (emphasis added); see also Act of Mar. 3, 1911, § 156, 36 Stat. 1139 (reenacting the statute without any significant changes). Now, it says that "[e]very claim of which" the Court of Federal Claims "*has jurisdiction* shall be barred" unless filed within six years of the time it first accrues. 28 U. S. C. § 2501 (emphasis added).

This Court does not "presume" that the 1948 revision "worked a change in the underlying substantive law 'unless an intent to make such a change is clearly expressed.'" *Keene Corp.* v. *United States*, 508 U. S. 200, 209 (1993) (quoting *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U. S. 222, 227 (1957); alterations omitted); see also H. R. Rep. No. 308, 80th Cong., 1st Sess., 1–8 (1947) (hereinafter Rep. No. 308) (revision sought to codify, not substantively modify, existing law); Barron, The Judicial Code: 1948 Revision, 8 F. R. D. 439 (1948) (same). We can find no such expression of intent here. The two linguistic forms ("cognizable by"; "has jurisdiction") mean about the same thing. See Black's Law Dictionary 991 (4th ed. 1951) (defining "jurisdiction" as "the authority by which courts and judicial officers take *cognizance of* and decide cases" (emphasis added)); see also Black's Law Dictionary 1038 (3d ed. 1933) (similarly using the term "cognizance" to define "jurisdiction"). Nor have we found any suggestion in the Reviser's Notes or anywhere else that Congress intended to change the prior meaning. See Rep. No. 308, at A192 (Reviser's Note); Barron, *supra*, at 446 (Reviser's Notes specify where change was intended). Thus, it is not surprising that nearly a decade *after* the revision, the Court, citing *Kendall*, again repeated that the statute's limitations period was "jurisdiction[al]" and not susceptible to equitable tolling. See *Soriano*, *supra*, at 273–274, 277.

III

In consequence, petitioner can succeed only by convincing us that this Court has overturned, or that it should now overturn, its earlier precedent.

A

We cannot agree with petitioner that the Court already has overturned the earlier precedent. It is true, as petitioner points out, that in *Irwin* v. *Department of Veterans*

Affairs, 498 U. S. 89 (1990), we adopted "a more general rule" to replace our prior ad hoc approach for determining whether a Government-related statute of limitations is subject to equitable tolling—namely, "that the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States." *Id.*, at 95–96. It is also true that *Irwin*, using that presumption, found equitable tolling applicable to a statute of limitations governing employment discrimination claims against the Government. See *id.*, at 96; see also 42 U. S. C. §2000e–16(c) (1988 ed.). And the Court noted that this civil rights statute was linguistically similar to the court of claims statute at issue here. See *Irwin*, *supra*, at 94–95.

But these few swallows cannot make petitioner's summer. That is because *Irwin* dealt with a different limitations statute. That statute, while similar to the present statute in language, is unlike the present statute in the key respect that the Court had not previously provided a definitive interpretation. Moreover, the Court, while mentioning a case that reflects the particular interpretive history of the court of claims statute, namely, *Soriano*, *supra*, says nothing at all about overturning that or any other case in that line. See 498 U. S., at 94–95. Courts do not normally overturn a long line of earlier cases without mentioning the matter. Indeed, *Irwin* recognized that it was announcing a general prospective rule, see *id.*, at 95, which does not imply revisiting past precedents.

Finally, *Irwin* adopted a "*rebuttable* presumption" of equitable tolling. *Ibid.* (emphasis added). That presumption seeks to produce a set of statutory interpretations that will more accurately reflect Congress' likely meaning in the mine run of instances where it enacted a Government-related statute of limitations. But the word "rebuttable" means that the presumption is not conclusive. Specific statutory lan-

guage, for example, could rebut the presumption by demonstrating Congress' intent to the contrary. And if so, a definitive earlier interpretation of the statute, finding a similar congressional intent, should offer a similarly sufficient rebuttal.

Petitioner adds that in *Franconia Associates* v. *United States*, 536 U. S. 129 (2002), we explicitly considered the court of claims limitations statute, we described the statute as "unexceptional," and we cited *Irwin* for the proposition "that limitations principles should generally apply to the Government in the same way that they apply to private parties." 536 U. S., at 145 (internal quotation marks omitted). But we did all of this in the context of rejecting an argument by the Government that the court of claims statute embodies a special, earlier-than-normal, rule as to when a claim first accrues. *Id.*, at 144–145. The quoted language thus refers only to the statute's claims-accrual rule and adds little or nothing to petitioner's contention that *Irwin* overruled our earlier cases—a contention that we have just rejected.

B

Petitioner's argument must therefore come down to an invitation now to reject or to overturn *Kendall*, *Finn*, *Soriano*, and related cases. In support, petitioner can claim that *Irwin* and *Franconia* represent a turn in the course of the law and can argue essentially as follows: The law now requires courts, when they interpret statutes setting forth limitations periods in respect to actions against the Government, to place greater weight upon the equitable importance of treating the Government like other litigants and less weight upon the special governmental interest in protecting public funds. Cf. *Irwin*, *supra*, at 95–96. The older interpretations treated these interests differently. Those older cases have consequently become anomalous. The Government is unlikely to have relied significantly upon those earlier cases. Hence the Court should now overrule them.

Basic principles of *stare decisis*, however, require us to reject this argument. Any anomaly the old cases and *Irwin* together create is not critical; at most, it reflects a different judicial assumption about the comparative weight Congress would likely have attached to competing legitimate interests. Moreover, the earlier cases lead, at worst, to different interpretations of different, but similarly worded, statutes; they do not produce "unworkable" law. See *United States* v. *International Business Machines Corp.*, 517 U. S. 843, 856 (1996) (internal quotation marks omitted); *California* v. *FERC*, 495 U. S. 490, 499 (1990). Further, *stare decisis* in respect to statutory interpretation has "special force," for "Congress remains free to alter what we have done." *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172–173 (1989); see also *Watson* v. *United States*, *ante*, at 82–83. Additionally, Congress has long acquiesced in the interpretation we have given. See *ibid.*; *Shepard* v. *United States*, 544 U. S. 13, 23 (2005).

Finally, even if the Government cannot show detrimental reliance on our earlier cases, our reexamination of well-settled precedent could nevertheless prove harmful. Justice Brandeis once observed that "in most matters it is more important that the applicable rule of law be settled than that it be settled right." *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (dissenting opinion). To overturn a decision settling one such matter simply because we might believe that decision is no longer "right" would inevitably reflect a willingness to reconsider others. And that willingness could itself threaten to substitute disruption, confusion, and uncertainty for necessary legal stability. We have not found here any factors that might overcome these considerations.

IV

The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, dissenting.

Statutes of limitations generally fall into two broad categories: affirmative defenses that can be waived and so-called "jurisdictional" statutes that are not subject to waiver or equitable tolling. For much of our history, statutes of limitations in suits against the Government were customarily placed in the latter category on the theory that conditions attached to a waiver of sovereign immunity "must be strictly observed and exceptions thereto are not to be implied." *Soriano* v. *United States*, 352 U. S. 270, 276 (1957); see also *Finn* v. *United States*, 123 U. S. 227, 232–233 (1887); *Kendall* v. *United States*, 107 U. S. 123, 125–126 (1883). But that rule was ignored—and thus presumably abandoned—in *Honda* v. *Clark*, 386 U. S. 484 (1967),[1] and *Bowen* v. *City of New York*, 476 U. S. 467 (1986).[2]

In *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 95–96 (1990), we followed the lead of *Bowen* (and, by extension, *Honda*), and explicitly replaced the *Soriano* rule with a rebuttable presumption that equitable tolling rules "applicable to suits against private defendants should also apply to suits against the United States."[3] We acknowledged that

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[1] In *Honda*, we concluded, as to petitioners' attempts to recover assets that had been seized upon the outbreak of hostilities with Japan, that it was "consistent with the overall congressional purpose to apply a traditional equitable tolling principle, aptly suited to the particular facts of this case and nowhere eschewed by Congress." 386 U. S., at 501.

[2] In *Bowen*, we permitted equitable tolling of the 60-day requirement for challenging the denial of disability benefits under the Social Security Act. We cautioned that "we must be careful not to assume the authority to narrow the waiver that Congress intended, or construe the waiver unduly restrictively." 476 U. S., at 479 (citation and internal quotation marks omitted).

[3] During the *Irwin* oral arguments, several Members of the Court remarked on the need to choose between the *Soriano* line of cases and the approach taken in cases like *Bowen*. See Tr. of Oral Arg., O. T. 1990, No. 89–5867, pp. 25–26 ("Question: '[W]hat do you make of our cases which seem to go really in different directions. The *Bowen* case, which was

"our previous cases dealing with the effect of time limits in suits against the Government [had] not been entirely consistent," 498 U. S., at 94, and we determined that "a continuing effort on our part to decide each case on an ad hoc basis . . . would have the disadvantage of continuing unpredictability without the corresponding advantage of greater fidelity to the intent of Congress," *id.*, at 95. We therefore crafted a background rule that reflected "a realistic assessment of legislative intent," and also provided "a practically useful principle of interpretation." *Ibid.*

Our decision in *Irwin* did more than merely "mentio[n]" *Soriano*, *ante*, at 137; rather, we expressly declined to follow that case. We noted that the limitations language at issue in *Irwin* closely resembled the text we had confronted in *Soriano;* although we conceded that "[a]n argument [could] undoubtedly be made" that the statutes were distinguishable, we were "not persuaded that the difference between them [was] enough to manifest a different congressional intent with respect to the availability of equitable tolling," 498 U. S., at 95. Having found the two statutes functionally indistinguishable, we nevertheless declined the Government's invitation to follow *Soriano*, and we did not so much as cite *Kendall* or *Finn*. Instead, we adopted "a more general rule to govern the applicability of equitable tolling in suits against the Government," 498 U. S., at 95, and we applied the new presumption in favor of equitable tolling to the case before us.[1] Nothing in the framing of our decision to adopt

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unanimous and contains language in it that says statutory time limits are traditionally subject to equitable tolling, and other cases like maybe *Soriano* . . . which point in the other direction[?]' "); see also *id.*, at 8 ("Question: ' . . . I think we sort of have to choose between *Soriano* and *Bowen*, don't you think?' ").

[1] In the years since we decided *Irwin*, we have applied its rule in a number of statutory contexts. See, *e. g.*, *Scarborough* v. *Principi*, 541 U. S. 401, 420–423 (2004) (applying the rule of *Irwin* and finding that an application for fees under the Equal Access to Justice Act, 28 U. S. C. §2412(d)(1)(A), should be permitted to be amended out of time). Most

a "general rule" to govern the availability of equitable tolling in suits against the Government, *ibid.*, suggested a carveout for statutes we had already held ineligible for equitable tolling, pursuant to the approach that we had previously abandoned in *Honda* and *Bowen*, and definitively rejected in *Irwin*.

Indeed, in his separate opinion in *Irwin*, Justice White noted that the decision was not only inconsistent with our prior cases but also that it "directly overrule[d]" *Soriano*. 498 U. S., at 98 (opinion concurring in part and concurring in judgment). Neither the Court's opinion nor my separate opinion disagreed with that characterization of our holding. The attempt of the Court today, therefore, to cast petitioner's argument as an entreaty to overrule *Soriano*, as well as *Kendall* and *Finn*—and its response that "[b]asic principles of *stare decisis* . . . require us to reject this argument," *ante*, at 139—has a hollow ring. If the doctrine of *stare decisis* supplied a clear answer to the question posed by this case—or if the Government could plausibly argue that it had relied on *Soriano* after our decision in *Irwin*—I would join the Court's judgment, despite its unwisdom.[5] But I do not

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significantly, in *Franconia Associates* v. *United States*, 536 U. S. 129, 145 (2002), we affirmed, in the context of 28 U. S. C. § 2501, the rule that "limitations principles should generally apply to the Government 'in the same way that' they apply to private parties" (citing *Irwin*, 498 U. S., at 95). Although the Government is correct that the question presented by *Franconia* was when a claim accrued under § 2501, our reliance on *Irwin* undermines the majority's suggestion that *Irwin* has no bearing on statutes that have previously been the subject of judicial construction.

[5] The majority points out quite rightly, *ante*, at 139, that the doctrine of *stare decisis* has "'special force'" in statutory cases. See *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172–173 (1989). But the doctrine should not prevent us from acknowledging when we have already overruled a prior case, even if we failed to say so explicitly at the time. In *Rasul* v. *Bush*, 542 U. S. 466 (2004), for example, we explained that in *Braden* v. *30th Judicial Circuit Court of Ky.*, 410 U. S. 484 (1973), we had overruled so much of *Ahrens* v. *Clark*, 335 U. S. 188 (1948), as found that the habeas petitioners' presence within the territorial reach of the district

agree with the majority's reading of our cases. It seems to me quite plain that *Soriano* is no longer good law, and if there is in fact ambiguity in our cases, it ought to be resolved in favor of clarifying the law, rather than preserving an anachronism whose doctrinal underpinnings were discarded years ago.[6]

With respect to provisions as common as time limitations, Congress, in enacting statutes, and judges, in applying them, ought to be able to rely upon a background rule of considerable clarity. *Irwin* announced such a rule, and I would apply that rule to the case before us.[7] Because today's decision threatens to revive the confusion of our pre-*Irwin* jurisprudence, I respectfully dissent.

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court was a jurisdictional prerequisite. *Braden* held, contrary to *Ahrens*, that a prisoner's presence within the district court's territorial reach was *not* an "inflexible jurisdictional rule," 410 U. S., at 500. *Braden* nowhere stated that it was overruling *Ahrens*, although Justice Rehnquist began his dissent by noting: "Today the Court overrules *Ahrens* v. *Clark*." 410 U. S., at 502. Thirty years later we acknowledged in *Rasul* what was by then clear: *Ahrens* was no longer good law. 542 U. S., at 478–479, and n. 9.

Moreover, the logic of the "special force" of *stare decisis* in the statutory context is that "Congress remains free to alter what we have done," *Patterson*, 491 U. S., at 172–173. But the amendment of an obscure statutory provision is not a high priority for a busy Congress, and we should remain mindful that enactment of legislation is by no means a cost-free enterprise.

[6] See Holmes, The Path of the Law, 10 Harv. L. Rev. 457, 469 (1897) ("It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past").

[7] The majority does gesture toward an application of *Irwin*, contending that even if *Irwin*'s rule is apposite, the presumption of congressional intent to allow equitable tolling is rebutted by this Court's "definitive earlier interpretation" of §2501, *ante*, at 138. But the majority's application of the *Irwin* rule is implausible, since *Irwin* itself compared the language of §2501 with the limitations language of Title VII of the Civil Rights Act of 1964, and found that the comparison did *not* reveal "a different congressional intent with respect to the availability of equitable tolling," 498 U. S., at 95.

JUSTICE GINSBURG, dissenting.

I agree that adhering to *Kendall*, *Finn*, and *Soriano* is irreconcilable with the reasoning and result in *Irwin*, and therefore join JUSTICE STEVENS' dissent. I write separately to explain why I would regard this case as an appropriate occasion to revisit those precedents even if we had not already "directly overrule[d]" them. Cf. *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 98 (1990) (White, J., concurring in part and concurring in judgment).

Stare decisis is an important, but not an inflexible, doctrine in our law. See *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 405 (1932) (Brandeis, J., dissenting) ("*Stare decisis* is not . . . a universal, inexorable command."). The policies underlying the doctrine—stability and predictability—are at their strongest when the Court is asked to change its mind, though nothing else of significance has changed. See Powell, Stare Decisis and Judicial Restraint, 47 Wash. & Lee L. Rev. 281, 286–287 (1990). As to the matter before us, our perception of the office of a time limit on suits against the Government has changed significantly since the decisions relied upon by the Court. We have recognized that "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States," *Irwin*, 498 U. S., at 95–96, and that "limitations principles should generally apply to the Government in the same way that they apply to private parties," *Franconia Associates* v. *United States*, 536 U. S. 129, 145 (2002) (internal quotation marks omitted). See also *Scarborough* v. *Principi*, 541 U. S. 401, 420–422 (2004). It damages the coherence of the law if we cling to outworn precedent at odds with later, more enlightened decisions.

I surely do not suggest that overruling is routinely in order whenever a majority disagrees with a past decision, and I acknowledge that "[c]onsiderations of *stare decisis* have special force in the area of statutory interpretation,"

Patterson v. *McLean Credit Union*, 491 U. S. 164, 172 (1989). But concerns we have previously found sufficiently weighty to justify revisiting a statutory precedent counsel strongly in favor of doing so here. First, overruling *Kendall* v. *United States*, 107 U. S. 123 (1883), *Finn* v. *United States*, 123 U. S. 227 (1887), and *Soriano* v. *United States*, 352 U. S. 270 (1957), would, as the Court concedes, see *ante*, at 138–139, "achieve a uniform interpretation of similar statutory language," *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477, 484 (1989). Second, we have recognized the propriety of revisiting a decision when "intervening development of the law" has "removed or weakened [its] conceptual underpinnings." *Patterson*, 491 U. S., at 173. *Irwin* and *Franconia*—not to mention our recent efforts to apply the term "jurisdictional" with greater precision, see, *e. g.*, *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 515–516 (2006)—have left no tenable basis for *Kendall* and its progeny.

Third, it is altogether appropriate to overrule a precedent that has become "a positive detriment to coherence and consistency in the law." *Patterson*, 491 U. S., at 173. The inconsistency between the *Kendall* line and *Irwin* is a source of both theoretical incoherence and practical confusion. For example, 28 U. S. C. §2401(a) contains a time limit materially identical to the one in §2501. Courts of Appeals have divided on the question whether §2401(a)'s limit is "jurisdictional." Compare *Center for Biological Diversity* v. *Hamilton*, 453 F. 3d 1331, 1334 (CA11 2006) *(per curiam)*, with *Cedars-Sinai Medical Center* v. *Shalala*, 125 F. 3d 765, 770 (CA9 1997). See also *Harris* v. *Federal Aviation Admin.*, 353 F. 3d 1006, 1013, n. 7 (CADC 2004) (recognizing that *Irwin* may have undermined Circuit precedent holding that §2401(a) is "jurisdictional"). Today's decision hardly assists lower courts endeavoring to answer this question. While holding that the language in §2501 is "jurisdictional," the Court also implies that *Irwin* governs the interpretation of

all statutes we have not yet construed—including, presumably, the identically worded §2401. See *ante*, at 137–138.

Moreover, as the Court implicitly concedes, see *ante*, at 139, the strongest reason to adhere to precedent provides no support for the *Kendall-Finn-Soriano* line. "*Stare decisis* has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response." *Hilton* v. *South Carolina Public Railways Comm'n*, 502 U. S. 197, 202 (1991). The Government, however, makes no claim that either private citizens or Congress have relied upon the "jurisdictional" status of §2501. There are thus strong reasons to abandon—and notably slim reasons to adhere to—the anachronistic interpretation of §2501 adopted in *Kendall*.

Several times, in recent Terms, the Court has discarded statutory decisions rendered infirm by what a majority considered to be better informed opinion. See, *e. g.*, *Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.*, 551 U. S. 877, 907 (2007) (overruling *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U. S. 373 (1911)); *Bowles* v. *Russell*, 551 U. S. 205, 214 (2007) (overruling *Thompson* v. *INS*, 375 U. S. 384 (1964) *(per curiam)*, and *Harris Truck Lines, Inc.* v. *Cherry Meat Packers, Inc.*, 371 U. S. 215 (1962) *(per curiam)*); *Illinois Tool Works Inc.* v. *Independent Ink, Inc.*, 547 U. S. 28, 42–43 (2006) (overruling, *inter alia*, *Morton Salt Co.* v. *G. S. Suppiger Co.*, 314 U. S. 488 (1942)); *Hohn* v. *United States*, 524 U. S. 236, 253 (1998) (overruling *House* v. *Mayo*, 324 U. S. 42 (1945) *(per curiam)*). In light of these overrulings, the Court's decision to adhere to *Kendall*, *Finn*, and *Soriano*—while offering nothing to justify their reasoning or results—is, to say the least, perplexing. After today's decision, one will need a crystal ball to predict when this Court will reject, and when it will cling to, its prior decisions interpreting legislative texts.

I would reverse the judgment rendered by the Federal Circuit majority. In accord with dissenting Judge Newman, I would hold that the Court of Appeals had no warrant to declare the petitioner's action time barred.

Syllabus

STONERIDGE INVESTMENT PARTNERS, LLC *v.* SCIENTIFIC-ATLANTA, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 06–43. Argued October 9, 2007—Decided January 15, 2008

Alleging losses after purchasing Charter Communications, Inc., common stock, petitioner filed suit against respondents and others under § 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission (SEC) Rule 10b–5. Acting as Charter's customers and suppliers, respondents had agreed to arrangements that allowed Charter to mislead its auditor and issue a misleading financial statement affecting its stock price, but they had no role in preparing or disseminating the financial statement. Affirming the District Court's dismissal of respondents, the Eighth Circuit ruled that the allegations did not show that respondents made misstatements relied upon by the public or violated a duty to disclose. The court observed that, at most, respondents had aided and abetted Charter's misstatement, and noted that the private cause of action this Court has found implied in § 10(b) and Rule 10b–5, *Superintendent of Ins. of N. Y.* v. *Bankers Life & Casualty Co.*, 404 U. S. 6, 13, n. 9, does not extend to aiding and abetting a § 10(b) violation, see *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 191.

Held: The § 10(b) private right of action does not reach respondents because Charter investors did not rely upon respondents' statements or representations. Pp. 156–167.

(a) Although *Central Bank* prompted calls for creation of an express cause of action for aiding and abetting, Congress did not follow this course. Instead, in § 104 of the Private Securities Litigation Reform Act of 1995 (PSLRA), it directed the SEC to prosecute aiders and abettors. Thus, the § 10(b) private right of action does not extend to aiders and abettors. Because the conduct of a secondary actor must therefore satisfy each of the elements or preconditions for § 10(b) liability, the plaintiff must prove, as here relevant, reliance upon a material misrepresentation or omission by the defendant. Pp. 156–158.

(b) The Court has found a rebuttable presumption of reliance in two circumstances. First, if there is an omission of a material fact by one with a duty to disclose, the investor to whom the duty was owed need not provide specific proof of reliance. *Affiliated Ute Citizens of Utah* v. *United States*, 406 U. S. 128, 153–154. Second, under the fraud-on-

the-market doctrine, reliance is presumed when the statements at issue become public. Neither presumption applies here: Respondents had no duty to disclose; and their deceptive acts were not communicated to the investing public during the relevant times. Petitioner, as a result, cannot show reliance upon any of respondents' actions except in an indirect chain that is too remote for liability. P. 159.

(c) Petitioner's reference to so-called "scheme liability" does not, absent a public statement, answer the objection that petitioner did not in fact rely upon respondents' deceptive conduct. Were the Court to adopt petitioner's concept of reliance—*i. e.*, that in an efficient market investors rely not only upon the public statements relating to a security but also upon the transactions those statements reflect—the implied cause of action would reach the whole marketplace in which the issuing company does business. There is no authority for this rule. Reliance is tied to causation, leading to the inquiry whether respondents' deceptive acts were immediate or remote to the injury. Those acts, which were not disclosed to the investing public, are too remote to satisfy the reliance requirement. It was Charter, not respondents, that misled its auditor and filed fraudulent financial statements; nothing respondents did made it necessary or inevitable for Charter to record the transactions as it did. The Court's precedents counsel against petitioner's attempt to extend the § 10(b) private cause of action beyond the securities markets into the realm of ordinary business operations, which are governed, for the most part, by state law. See, *e. g.*, *Marine Bank* v. *Weaver*, 455 U. S. 551, 556. The argument that there could be a reliance finding if this were a common-law fraud action is answered by the fact that § 10(b) does not incorporate common-law fraud into federal law, see, *e. g.*, *SEC* v. *Zandford*, 535 U. S. 813, 820, and should not be interpreted to provide a private cause of action against the entire marketplace in which the issuing company operates, cf. *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 733, n. 5. Petitioner's theory, moreover, would put an unsupportable interpretation on Congress' specific response to *Central Bank* in PSLRA § 104 by, in substance, reviving the implied cause of action against most aiders and abettors and thereby undermining Congress' determination that this class of defendants should be pursued only by the SEC. The practical consequences of such an expansion provide a further reason to reject petitioner's approach. The extensive discovery and the potential for uncertainty and disruption in a lawsuit could allow plaintiffs with weak claims to extort settlements from innocent companies. See, *e. g.*, *Blue Chip*, *supra*, at 740–741. It would also expose to such risks a new class of defendants—overseas firms with no other exposure to U. S. securities laws—thereby deterring them from doing business here, raising the cost of being a

publicly traded company under U. S. law, and shifting securities offerings away from domestic capital markets. Pp. 159–164.

(d) Upon full consideration, the history of the § 10(b) private right of action and the careful approach the Court has taken before proceeding without congressional direction provide further reasons to find no liability here. The § 10(b) private cause of action is a judicial construct that Congress did not direct in the text of the relevant statutes. See, *e. g.*, *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U. S. 350, 358–359. Separation of powers provides good reason for the now-settled view that an implied cause of action exists only if the underlying statute can be interpreted to disclose the intent to create one, see, *e. g.*, *Alexander* v. *Sandoval*, 532 U. S. 275, 286–287. The decision to extend the cause of action is thus for the Congress, not for this Court. This restraint is appropriate in light of the PSLRA, in which Congress ratified the implied right of action after the Court moved away from a broad willingness to imply such private rights, see, *e. g.*, *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Curran*, 456 U. S. 353, 381–382, and n. 66. It is appropriate for the Court to assume that when PSLRA § 104 was enacted, Congress accepted the § 10(b) private right as then defined but chose to extend it no further. See, *e. g.*, *Alexander*, *supra*, at 286–287. Pp. 164–166.

443 F. 3d 987, affirmed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, and ALITO, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER and GINSBURG, JJ., joined, *post*, p. 167. BREYER, J., took no part in the consideration or decision of the case.

Stanley M. Grossman argued the cause for petitioner. With him on the briefs were *Marc I. Gross* and *Joshua B. Silverman*.

Stephen M. Shapiro argued the cause for respondents. With him on the brief were *Andrew J. Pincus*, *Timothy S. Bishop*, *John P. Schmitz*, *Charles Rothfeld*, *J. Brett Busby*, *Oscar N. Persons*, *Susan E. Hurd*, *Stephen M. Sacks*, and *John C. Massaro*.

Deputy Solicitor General Hungar argued the cause for the United States as *amicus curiae* urging affirmance.

Counsel

With him on the brief were *Solicitor General Clement* and *Kannon K. Shanmugam.**

*Briefs of *amici curiae* urging reversal were filed for the State of Arkansas et al. by *Dustin McDaniel*, Attorney General of Arkansas, and *Stanley D. Bernstein*, and by the Attorneys General for their respective States as follows: *Stuart Rabner* of New Jersey and *Patrick C. Lynch* of Rhode Island; for the State of Ohio et al. by *Marc Dann*, Attorney General of Ohio, *Elise W. Porter*, Acting Solicitor General, *Christopher R. Geidner* and *Robert J. Krummen*, Deputy Solicitors, *Beth A. Finnerty*, *Randall W. Knutti*, and *Andrea L. Seidt*, Assistant Attorneys General, by *Greg Abbott*, Attorney General of Texas, and *David C. Mattax*, and by the Attorneys General for their respective jurisdictions as follows: *Talis J. Colberg* of Alaska, *Terry Goddard* of Arizona, *Richard Blumenthal* of Connecticut, *Linda Singer* of the District of Columbia, *Mark J. Bennett* of Hawaii, *Lisa Madigan* of Illinois, *Thomas J. Miller* of Iowa, *Gregory D. Stumbo* of Kentucky, *G. Steven Rowe* of Maine, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Michael A. Fox* of Michigan, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Catherine Cortez Masto* of Nevada, *Kelly A. Ayotte* of New Hampshire, *Gary King* of New Mexico, *Andrew Cuomo* of New York, *Wayne Stenehjem* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Roberto J. Sánchez-Ramos* of Puerto Rico, *Henry McMaster* of South Carolina, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Darrell V. McGraw, Jr.*, of West Virginia, and *J. B. Van Hollen* of Wisconsin; for AARP et al. by *Deborah Zuckerman*, *Jonathan W. Cuneo*, *Robert J. Cynkar*, *Michael G. Lenett*, and *Matthew Wiener*; for the American Association for Justice by *Louis M. Bograd*; for the California State Teachers' Retirement System by *Steven N. Williams* and *Joseph W. Cotchett*; for Change to Win et al. by *Patrick J. Szymanski*; for Former SEC Commissioners by *Arthur R. Miller* and *Meyer Eisenberg*; for the Los Angeles County Employees Retirement Association et al. by *Stuart M. Grant*, *David L. Muir*, and *Peter H. Mixon*, by *Mr. Blumenthal*, Attorney General of Connecticut, and by *Michael A. Cardozo*; for the New York State Teachers' Retirement System et al. by *Max W. Berger*; for the North American Securities Administrators Association, Inc., by *Alfred E. T. Rusch*; for the Honorable John Conyers, Jr., et al. by *James Segel* and *Lawranne Stewart*; and for James D. Cox et al. by *Jill E. Fisch*, *pro se*.

Briefs of *amici curiae* urging affirmance were filed for the American Bankers Association et al. by *H. Rodgin Cohen*, *David H. Braff*, *Robert J.*

JUSTICE KENNEDY delivered the opinion of the Court.

We consider the reach of the private right of action the Court has found implied in § 10(b) of the Securities Exchange Act of 1934, 48 Stat. 891, as amended, 15 U. S. C. § 78j(b), and SEC Rule 10b–5, 17 CFR § 240.10b–5 (2007). In this suit investors alleged losses after purchasing common stock. They sought to impose liability on entities who, acting both as customers and suppliers, agreed to arrangements that allowed the investors' company to mislead its auditor and issue

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Giuffra, Jr., *Marc De Leeuw*, *Jeffrey T. Scott*, and *Steven J. Purcell*; for the American Institute of Certified Public Accountants by *Lawrence S. Robbins*, *Gary A. Orseck*, *Kathryn S. Zecca*, and *Richard I. Miller*; for the American Insurance Association et al. by *John E. McKeever*; for the Attorneys' Liability Assurance Society, Inc., by *John K. Villa*, *Richard A. Olderman*, and *Mark D. Nozette*; for the Business Roundtable by *Seth P. Waxman*, *Louis R. Cohen*, *Stuart F. Delery*, *Robert B. McCaw*, and *Christopher J. Meade*; for the Chamber of Commerce of the United States of America by *Carter G. Phillips*, *Richard D. Bernstein*, *Daniel A. McLaughlin*, *Robert N. Hochman*, *Jacqueline G. Cooper*, *Robin S. Conrad*, and *Amar D. Sarwal*; for the Defense Research Institute by *Jerrold J. Ganzfried* and *Fiona A. Philip*; for Former SEC Commissioners and Officials et al. by *Mark A. Perry* and *Amanda M. Rose*; for Merrill Lynch & Co., Inc., by *Dick Thornburgh*, *Paul Gonson*, and *Glenn R. Reichardt*; for the NASDAQ Stock Market, Inc., et al. by *Kathleen M. Sullivan*, *Daniel H. Bromberg*, and *Elizabeth B. Wydra*; for the National Association of Manufacturers by *George M. Newcombe*, *Michael J. Chepiga*, *Jan S. Amundson*, and *Quentin Riegel*; for the Organization for International Investment et al. by *Stuart J. Baskin* and *Herbert S. Washer*; for the Securities Industry and Financial Markets Association et al. by *Walter Dellinger*, *Jonathan Rosenberg*, *William J. Sushon*, *B. Andrew Bednark*, and *Kevin M. Carroll*; for the Washington Legal Foundation by *Kenneth W. Starr*, *Robert R. Gasaway*, *Ashley C. Parrish*, *Daniel J. Popeo*, and *Richard A. Samp*; and for Richard I. Beattie et al. by *Richard W. Clary*.

Briefs of *amici curiae* were filed for the Council of Institutional Investors by *Mark C. Hansen* and *Priya R. Aiyar*; for Regents of the University of California by *William S. Lerach*, *Patrick J. Coughlin*, *Byron S. Georgiou*, *Eric Alan Isaacson*, and *Joseph D. Daley*; and for Charles W. Adams et al. by *Mr. Adams* and *William von Glahn*, both *pro se*.

a misleading financial statement affecting the stock price. We conclude the implied right of action does not reach the customer/supplier companies because the investors did not rely upon their statements or representations. We affirm the judgment of the Court of Appeals.

I

This class-action suit by investors was filed against Charter Communications, Inc., in the United States District Court for the Eastern District of Missouri. Stoneridge Investment Partners, LLC, a limited liability company organized under the laws of Delaware, was the lead plaintiff and is petitioner here.

Charter issued the financial statements and the securities in question. It was a named defendant along with some of its executives and Arthur Andersen LLP, Charter's independent auditor during the period in question. We are concerned, though, with two other defendants, respondents here. Respondents are Scientific-Atlanta, Inc., and Motorola, Inc. They were suppliers, and later customers, of Charter.

For purposes of this proceeding, we take these facts, alleged by petitioner, to be true. Charter, a cable operator, engaged in a variety of fraudulent practices so its quarterly reports would meet Wall Street expectations for cable subscriber growth and operating cashflow. The fraud included misclassification of its customer base; delayed reporting of terminated customers; improper capitalization of costs that should have been shown as expenses; and manipulation of the company's billing cutoff dates to inflate reported revenues. In late 2000, Charter executives realized that, despite these efforts, the company would miss projected operating cashflow numbers by $15 to $20 million. To help meet the shortfall, Charter decided to alter its existing arrangements with respondents, Scientific-Atlanta and Motorola. Peti-

tioner's theory as to whether Arthur Andersen was altogether misled or, on the other hand, knew the structure of the contract arrangements and was complicit to some degree, is not clear at this stage of the case. The point, however, is neither controlling nor significant for our present disposition, and in our decision we assume it was misled.

Respondents supplied Charter with the digital cable converter (set-top) boxes that Charter furnished to its customers. Charter arranged to overpay respondents $20 for each set-top box it purchased until the end of the year, with the understanding that respondents would return the overpayment by purchasing advertising from Charter. The transactions, it is alleged, had no economic substance; but, because Charter would then record the advertising purchases as revenue and capitalize its purchase of the set top boxes, in violation of generally accepted accounting principles, the transactions would enable Charter to fool its auditor into approving a financial statement showing it met projected revenue and operating cashflow numbers. Respondents agreed to the arrangement.

So that Arthur Andersen would not discover the link between Charter's increased payments for the boxes and the advertising purchases, the companies drafted documents to make it appear the transactions were unrelated and conducted in the ordinary course of business. Following a request from Charter, Scientific-Atlanta sent documents to Charter stating—falsely—that it had increased production costs. It raised the price for set-top boxes for the rest of 2000 by $20 per box. As for Motorola, in a written contract Charter agreed to purchase from Motorola a specific number of set-top boxes and pay liquidated damages of $20 for each unit it did not take. The contract was made with the expectation Charter would fail to purchase all the units and pay Motorola the liquidated damages.

To return the additional money from the set top box sales, Scientific-Atlanta and Motorola signed contracts with Char-

ter to purchase advertising time for a price higher than fair value. The new set-top box agreements were backdated to make it appear that they were negotiated a month before the advertising agreements. The backdating was important to convey the impression that the negotiations were unconnected, a point Arthur Andersen considered necessary for separate treatment of the transactions. Charter recorded the advertising payments to inflate revenue and operating cash-flow by approximately $17 million. The inflated number was shown on financial statements filed with the Securities and Exchange Commission (SEC) and reported to the public.

Respondents had no role in preparing or disseminating Charter's financial statements. And their own financial statements booked the transactions as a wash, under generally accepted accounting principles. It is alleged respondents knew or were in reckless disregard of Charter's intention to use the transactions to inflate its revenues and knew the resulting financial statements issued by Charter would be relied upon by research analysts and investors.

Petitioner filed a securities fraud class action on behalf of purchasers of Charter stock alleging that, by participating in the transactions, respondents violated § 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b–5.

The District Court granted respondents' motion to dismiss for failure to state a claim on which relief can be granted. The United States Court of Appeals for the Eighth Circuit affirmed. *In re Charter Communications, Inc., Securities Litigation*, 443 F. 3d 987 (2006). In its view the allegations did not show that respondents made misstatements relied upon by the public or that they violated a duty to disclose; and on this premise it found no violation of § 10(b) by respondents. *Id.*, at 992. At most, the court observed, respondents had aided and abetted Charter's misstatement of its financial results; but, it noted, there is no private right of action for aiding and abetting a § 10(b) violation. See *Central Bank of Denver, N. A.* v. *First Interstate Bank of Den-*

ver, N. A., 511 U. S. 164, 191 (1994). The court also affirmed the District Court's denial of petitioner's motion to amend the complaint, as the revised pleading would not change the court's conclusion on the merits. 443 F. 3d, at 993.

Decisions of the Courts of Appeals are in conflict respecting when, if ever, an injured investor may rely upon § 10(b) to recover from a party that neither makes a public misstatement nor violates a duty to disclose but does participate in a scheme to violate § 10(b). Compare *Simpson* v. *AOL Time Warner Inc.*, 452 F. 3d 1040 (CA9 2006), with *Regents of Univ. of Cal.* v. *Credit Suisse First Boston (USA), Inc.*, 482 F. 3d 372 (CA5 2007). We granted certiorari. 549 U. S. 1304 (2007).

II

Section 10(b) of the Securities Exchange Act makes it

> "unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange
>
> . . . . .
>
> "[t]o use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." 15 U. S. C. § 78j.

The SEC, pursuant to this section, promulgated Rule 10b–5, which makes it unlawful

> "(a) To employ any device, scheme, or artifice to defraud,
>
> "(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

"in connection with the purchase or sale of any security." 17 CFR §240.10b–5.

Rule 10b–5 encompasses only conduct already prohibited by §10(b). *United States* v. *O'Hagan*, 521 U. S. 642, 651 (1997). Though the text of the Securities Exchange Act does not provide for a private cause of action for §10(b) violations, the Court has found a right of action implied in the words of the statute and its implementing regulation. *Superintendent of Ins. of N. Y.* v. *Bankers Life & Casualty Co.*, 404 U. S. 6, 13, n. 9 (1971). In a typical §10(b) private action a plaintiff must prove (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation. See *Dura Pharmaceuticals, Inc.* v. *Broudo*, 544 U. S. 336, 341–342 (2005).

In *Central Bank*, the Court determined that §10(b) liability did not extend to aiders and abettors. The Court found the scope of §10(b) to be delimited by the text, which makes no mention of aiding and abetting liability. 511 U. S., at 177. The Court doubted the implied §10(b) action should extend to aiders and abettors when none of the express causes of action in the securities Acts included that liability. *Id.*, at 180. It added the following:

"Were we to allow the aiding and abetting action proposed in this case, the defendant could be liable without any showing that the plaintiff relied upon the aider and abettor's statements or actions. See also *Chiarella* [v. *United States*, 445 U. S. 222, 228 (1980)]. Allowing plaintiffs to circumvent the reliance requirement would disregard the careful limits on 10b–5 recovery mandated by our earlier cases." *Ibid.*

The decision in *Central Bank* led to calls for Congress to create an express cause of action for aiding and abetting within the Securities Exchange Act. Then-SEC Chairman Arthur Levitt, testifying before the Senate Securities Subcommittee, cited *Central Bank* and recommended that aiding and abetting liability in private claims be established. S. Hearing No. 103–759, pp. 13–14 (1994). Congress did not follow this course. Instead, in § 104 of the Private Securities Litigation Reform Act of 1995 (PSLRA), 109 Stat. 757, it directed prosecution of aiders and abettors by the SEC. 15 U. S. C. § 78t(e).

The § 10(b) implied private right of action does not extend to aiders and abettors. The conduct of a secondary actor must satisfy each of the elements or preconditions for liability; and we consider whether the allegations here are sufficient to do so.

III

The Court of Appeals concluded petitioner had not alleged that respondents engaged in a deceptive act within the reach of the § 10(b) private right of action, noting that only misstatements, omissions by one who has a duty to disclose, and manipulative trading practices (where "manipulative" is a term of art, see, *e. g.*, *Santa Fe Industries, Inc.* v. *Green*, 430 U. S. 462, 476–477 (1977)) are deceptive within the meaning of the Rule. 443 F. 3d, at 992. If this conclusion were read to suggest there must be a specific oral or written statement before there could be liability under § 10(b) or Rule 10b–5, it would be erroneous. Conduct itself can be deceptive, as respondents concede. In this case, moreover, respondents' course of conduct included both oral and written statements, such as the backdated contracts agreed to by Charter and respondents.

A different interpretation of the holding from the Court of Appeals opinion is that the court was stating only that any deceptive statement or act respondents made was not actionable because it did not have the requisite proximate relation

to the investors' harm. That conclusion is consistent with our own determination that respondents' acts or statements were not relied upon by the investors and that, as a result, liability cannot be imposed upon respondents.

A

Reliance by the plaintiff upon the defendant's deceptive acts is an essential element of the § 10(b) private cause of action. It ensures that, for liability to arise, the "requisite causal connection between a defendant's misrepresentation and a plaintiff's injury" exists as a predicate for liability. *Basic Inc.* v. *Levinson*, 485 U. S. 224, 243 (1988); see also *Affiliated Ute Citizens of Utah* v. *United States*, 406 U. S. 128, 154 (1972) (requiring "causation in fact"). We have found a rebuttable presumption of reliance in two different circumstances. First, if there is an omission of a material fact by one with a duty to disclose, the investor to whom the duty was owed need not provide specific proof of reliance. *Id.*, at 153–154. Second, under the fraud-on-the-market doctrine, reliance is presumed when the statements at issue become public. The public information is reflected in the market price of the security. Then it can be assumed that an investor who buys or sells stock at the market price relies upon the statement. *Basic*, *supra*, at 247.

Neither presumption applies here. Respondents had no duty to disclose; and their deceptive acts were not communicated to the public. No member of the investing public had knowledge, either actual or presumed, of respondents' deceptive acts during the relevant times. Petitioner, as a result, cannot show reliance upon any of respondents' actions except in an indirect chain that we find too remote for liability.

B

Invoking what some courts call "scheme liability," see, *e. g.*, *In re Enron Corp. Securities, Derivative, & "ERISA" Litigation*, 439 F. Supp. 2d 692, 723 (SD Tex. 2006), peti-

tioner nonetheless seeks to impose liability on respondents even absent a public statement. In our view this approach does not answer the objection that petitioner did not in fact rely upon respondents' own deceptive conduct.

Liability is appropriate, petitioner contends, because respondents engaged in conduct with the purpose and effect of creating a false appearance of material fact to further a scheme to misrepresent Charter's revenue. The argument is that the financial statement Charter released to the public was a natural and expected consequence of respondents' deceptive acts; had respondents not assisted Charter, Charter's auditor would not have been fooled, and the financial statement would have been a more accurate reflection of Charter's financial condition. That causal link is sufficient, petitioner argues, to apply *Basic*'s presumption of reliance to respondents' acts. See, *e. g.*, *Simpson*, 452 F. 3d, at 1051–1052; *In re Parmalat Securities Litigation*, 376 F. Supp. 2d 472, 509 (SDNY 2005).

In effect petitioner contends that in an efficient market investors rely not only upon the public statements relating to a security but also upon the transactions those statements reflect. Were this concept of reliance to be adopted, the implied cause of action would reach the whole marketplace in which the issuing company does business; and there is no authority for this rule.

As stated above, reliance is tied to causation, leading to the inquiry whether respondents' acts were immediate or remote to the injury. In considering petitioner's arguments, we note § 10(b) provides that the deceptive act must be "in connection with the purchase or sale of any security." 15 U. S. C. § 78j(b). Though this phrase in part defines the statute's coverage rather than causation (and so we do not evaluate the "in connection with" requirement of § 10(b) in this case), the emphasis on a purchase or sale of securities does provide some insight into the deceptive acts that concerned the enacting Congress. See Black, Securities Commentary:

The Second Circuit's Approach to the 'In Connection With' Requirement of Rule 10b–5, 53 Brooklyn L. Rev. 539, 541 (1987) ("[W]hile the 'in connection with' and causation requirements are analytically distinct, they are related to each other, and discussion of the first requirement may merge with discussion of the second"). In all events we conclude respondents' deceptive acts, which were not disclosed to the investing public, are too remote to satisfy the requirement of reliance. It was Charter, not respondents, that misled its auditor and filed fraudulent financial statements; nothing respondents did made it necessary or inevitable for Charter to record the transactions as it did.

Petitioner invokes the private cause of action under § 10(b) and seeks to apply it beyond the securities markets—the realm of financing business—to purchase and supply contracts—the realm of ordinary business operations. The latter realm is governed, for the most part, by state law. It is true that if business operations are used, as alleged here, to affect securities markets, the SEC enforcement power may reach the culpable actors. It is true as well that a dynamic, free economy presupposes a high degree of integrity in all of its parts, an integrity that must be underwritten by rules enforceable in fair, independent, accessible courts. Were the implied cause of action to be extended to the practices described here, however, there would be a risk that the federal power would be used to invite litigation beyond the immediate sphere of securities litigation and in areas already governed by functioning and effective state-law guarantees. Our precedents counsel against this extension. See *Marine Bank* v. *Weaver*, 455 U. S. 551, 556 (1982) ("Congress, in enacting the securities laws, did not intend to provide a broad federal remedy for all fraud"); *Santa Fe*, 430 U. S., at 479–480 ("There may well be a need for uniform federal fiduciary standards . . . . But those standards should not be supplied by judicial extension of § 10(b) and Rule 10b–5 to 'cover the corporate universe'" (quoting Cary, Federalism

and Corporate Law: Reflections Upon Delaware, 83 Yale L. J. 663, 700 (1974))). Though § 10(b) is "not 'limited to preserving the integrity of the securities markets,'" *Bankers Life*, 404 U. S., at 12, it does not reach all commercial transactions that are fraudulent and affect the price of a security in some attenuated way.

These considerations answer as well the argument that if this were a common-law action for fraud there could be a finding of reliance. Even if the assumption is correct, it is not controlling. Section 10(b) does not incorporate common-law fraud into federal law. See, *e. g.*, *SEC* v. *Zandford*, 535 U. S. 813, 820 (2002) ("[Section 10(b)] must not be construed so broadly as to convert every common-law fraud that happens to involve securities into a violation"); *Central Bank*, 511 U. S., at 184 ("Even assuming . . . a deeply rooted background of aiding and abetting tort liability, it does not follow that Congress intended to apply that kind of liability to the private causes of action in the securities Acts"); see also *Dura*, 544 U. S., at 341. Just as § 10(b) "is surely badly strained when construed to provide a cause of action . . . to the world at large," *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 733, n. 5 (1975), it should not be interpreted to provide a private cause of action against the entire marketplace in which the issuing company operates.

Petitioner's theory, moreover, would put an unsupportable interpretation on Congress' specific response to *Central Bank* in § 104 of the PSLRA. Congress amended the securities laws to provide for limited coverage of aiders and abettors. Aiding and abetting liability is authorized in actions brought by the SEC but not by private parties. See 15 U. S. C. § 78t(e). Petitioner's view of primary liability makes any aider and abettor liable under § 10(b) if he or she committed a deceptive act in the process of providing assistance. Reply Brief for Petitioner 6, n. 2; Tr. of Oral Arg. 24. Were we to adopt this construction of § 10(b), it would revive in substance the implied cause of action against all aiders

and abettors except those who committed no deceptive act in the process of facilitating the fraud; and we would undermine Congress' determination that this class of defendants should be pursued by the SEC and not by private litigants. See *Alexander* v. *Sandoval*, 532 U. S. 275, 290 (2001) ("The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others"); *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 143 (2000) ("At the time a statute is enacted, it may have a range of plausible meanings. Over time, however, subsequent acts can shape or focus those meanings"); see also *Seatrain Shipbuilding Corp.* v. *Shell Oil Co.*, 444 U. S. 572, 596 (1980) ("[W]hile the views of subsequent Congresses cannot override the unmistakable intent of the enacting one, such views are entitled to significant weight, and particularly so when the precise intent of the enacting Congress is obscure" (citations omitted)).

This is not a case in which Congress has enacted a regulatory statute and then has accepted, over a long period of time, broad judicial authority to define substantive standards of conduct and liability. Cf. *Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.*, 551 U. S. 877, 899 (2007). And in accord with the nature of the cause of action at issue here, we give weight to Congress' amendment to the Act restoring aiding and abetting liability in certain cases but not others. The amendment, in our view, supports the conclusion that there is no liability.

The practical consequences of an expansion, which the Court has considered appropriate to examine in circumstances like these, see *Virginia Bankshares, Inc.* v. *Sandberg*, 501 U. S. 1083, 1104–1105 (1991); *Blue Chip*, 421 U. S., at 737, provide a further reason to reject petitioner's approach. In *Blue Chip*, the Court noted that extensive discovery and the potential for uncertainty and disruption in a lawsuit allow plaintiffs with weak claims to extort settlements from innocent companies. *Id.*, at 740–741. Adoption

of petitioner's approach would expose a new class of defendants to these risks. As noted in *Central Bank*, contracting parties might find it necessary to protect against these threats, raising the costs of doing business. See 511 U. S., at 189. Overseas firms with no other exposure to our securities laws could be deterred from doing business here. See Brief for Organization for International Investment et al. as *Amici Curiae* 17–20. This, in turn, may raise the cost of being a publicly traded company under our law and shift securities offerings away from domestic capital markets. Brief for NASDAQ Stock Market, Inc., et al. as *Amici Curiae* 12–14.

C

The history of the § 10(b) private right and the careful approach the Court has taken before proceeding without congressional direction provide further reasons to find no liability here. The § 10(b) private cause of action is a judicial construct that Congress did not enact in the text of the relevant statutes. See *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U. S. 350, 358–359 (1991); *Blue Chip*, *supra*, at 729. Though the rule once may have been otherwise, see *J. I. Case Co.* v. *Borak*, 377 U. S. 426, 432–433 (1964), it is settled that there is an implied cause of action only if the underlying statute can be interpreted to disclose the intent to create one, see, *e. g.*, *Alexander*, *supra*, at 286–287; *Virginia Bankshares*, *supra*, at 1102; *Touche Ross & Co.* v. *Redington*, 442 U. S. 560, 575 (1979). This is for good reason. In the absence of congressional intent the Judiciary's recognition of an implied private right of action

> "necessarily extends its authority to embrace a dispute Congress has not assigned it to resolve. This runs contrary to the established principle that '[t]he jurisdiction of the federal courts is carefully guarded against expansion by judicial interpretation . . . ,' *American Fire & Cas[ualty] Co.* v. *Finn*, 341 U. S. 6, 17 (1951), and con-

> flicts with the authority of Congress under Art. III to set the limits of federal jurisdiction." *Cannon* v. *University of Chicago*, 441 U. S. 677, 746–747 (1979) (Powell, J., dissenting) (citations and footnote omitted).

The determination of who can seek a remedy has significant consequences for the reach of federal power. See *Wilder* v. *Virginia Hospital Assn.*, 496 U. S. 498, 509, n. 9 (1990) (requirement of congressional intent "reflects a concern, grounded in separation of powers, that Congress rather than the courts controls the availability of remedies for violations of statutes").

Concerns with the judicial creation of a private cause of action caution against its expansion. The decision to extend the cause of action is for Congress, not for us. Though it remains the law, the § 10(b) private right should not be extended beyond its present boundaries. See *Virginia Bankshares*, *supra*, at 1102 ("[T]he breadth of the [private right of action] once recognized should not, as a general matter, grow beyond the scope congressionally intended"); see also *Central Bank*, *supra*, at 173 (determining that the scope of conduct prohibited is limited by the text of § 10(b)).

This restraint is appropriate in light of the PSLRA, which imposed heightened pleading requirements and a loss causation requirement upon "any private action" arising from the Securities Exchange Act. See 15 U. S. C. § 78u–4(b). It is clear these requirements touch upon the implied right of action, which is now a prominent feature of federal securities regulation. See *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U. S. 71, 81–82 (2006); *Dura*, 544 U. S., at 345–346; see also S. Rep. No. 104–98, pp. 4–5 (1995) (recognizing the § 10(b) implied cause of action, and indicating the PSLRA was intended to have "Congress . . . reassert its authority in this area"); *id.*, at 26 (indicating the pleading standards covered § 10(b) actions). Congress thus ratified the implied right of action after the Court moved away from a broad willingness to imply private rights of action. See

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. *Curran*, 456 U. S. 353, 381–382, and n. 66 (1982); cf. *Borak*, *supra*, at 433. It is appropriate for us to assume that when § 78u–4 was enacted, Congress accepted the § 10(b) private cause of action as then defined but chose to extend it no further.

IV

Secondary actors are subject to criminal penalties, see, *e. g.*, 15 U. S. C. § 78ff, and civil enforcement by the SEC, see, *e. g.*, § 78t(e). The enforcement power is not toothless. Since September 30, 2002, SEC enforcement actions have collected over $10 billion in disgorgement and penalties, much of it for distribution to injured investors. See SEC, 2007 Performance and Accountability Report, p. 26, http://www.sec.gov/about/secpar2007.shtml (as visited Jan. 2, 2008, and available in Clerk of Court's case file). And in this case both parties agree that criminal penalties are a strong deterrent. See Brief for Respondents 48; Reply Brief for Petitioner 17. In addition some state securities laws permit state authorities to seek fines and restitution from aiders and abettors. See, *e. g.*, Del. Code Ann., Tit. 6, § 7325 (2005). All secondary actors, furthermore, are not necessarily immune from private suit. The securities statutes provide an express private right of action against accountants and underwriters in certain circumstances, see 15 U. S. C. § 77k, and the implied right of action in § 10(b) continues to cover secondary actors who commit primary violations, *Central Bank*, 511 U. S., at 191.

Here respondents were acting in concert with Charter in the ordinary course as suppliers and, as matters then evolved in the not so ordinary course, as customers. Unconventional as the arrangement was, it took place in the marketplace for goods and services, not in the investment sphere. Charter was free to do as it chose in preparing its books, conferring with its auditor, and preparing and then issuing its financial statements. In these circumstances the investors cannot be

said to have relied upon any of respondents' deceptive acts in the decision to purchase or sell securities; and as the requisite reliance cannot be shown, respondents have no liability to petitioner under the implied right of action. This conclusion is consistent with the narrow dimensions we must give to a right of action Congress did not authorize when it first enacted the statute and did not expand when it revisited the law.

The judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BREYER took no part in the consideration or decision of this case.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, dissenting.

Charter Communications, Inc., inflated its revenues by $17 million in order to cover up a $15 to $20 million expected cashflow shortfall. It could not have done so absent the knowingly fraudulent actions of Scientific-Atlanta, Inc., and Motorola, Inc. Investors relied on Charter's revenue statements in deciding whether to invest in Charter and in doing so relied on respondents' fraud, which was itself a "deceptive device" prohibited by § 10(b) of the Securities Exchange Act of 1934. 15 U. S. C. § 78j(b). This is enough to satisfy the requirements of § 10(b) and enough to distinguish this case from *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164 (1994).

The Court seems to assume that respondents' alleged conduct could subject them to liability in an enforcement proceeding initiated by the Government, *ante*, at 166, but nevertheless concludes that they are not subject to liability in a private action brought by injured investors because they are, at most, guilty of aiding and abetting a violation of § 10(b),

rather than an actual violation of the statute. While that conclusion results in an affirmance of the judgment of the Court of Appeals, it rests on a rejection of that court's reasoning. Furthermore, while the Court frequently refers to petitioner's attempt to "expand" the implied cause of action[1]—a conclusion that begs the question of the contours of that cause of action—it is today's decision that results in a significant departure from *Central Bank*.

The Court's conclusion that no violation of § 10(b) giving rise to a private right of action has been alleged in this case rests on two faulty premises: (1) the Court's overly broad reading of *Central Bank*, and (2) the view that reliance requires a kind of super-causation—a view contrary to both the Securities and Exchange Commission's (SEC) position in a recent Ninth Circuit case[2] and our holding in *Basic Inc.* v. *Levinson*, 485 U. S. 224 (1988). These two points merit separate discussion.

I

The Court of Appeals incorrectly based its decision on the view that "[a] device or contrivance is not 'deceptive,' within the meaning of § 10(b), absent some misstatement or a failure to disclose by one who has a duty to disclose." *In re Charter Communications, Inc., Securities Litigation*, 443 F. 3d 987, 992 (CA8 2006). The Court correctly explains why the statute covers nonverbal as well as verbal deceptive conduct. *Ante*, at 158. The allegations in this case—that respondents

[1] See *ante*, at 161 ("[w]ere the implied cause of action to be extended to the practices described here . . . "); *ante*, at 163 ("[t]he practical consequences of an expansion"); *ante*, at 165 ("Concerns with the judicial creation of a private cause of action caution against its expansion. The decision to extend the cause of action is for the Congress, not for us").

[2] See Brief for SEC as *Amicus Curiae* in *Simpson* v. *AOL Time Warner Inc.*, No. 04–55665 (CA9), p. 21 ("The reliance requirement is satisfied where a plaintiff relies on a material deception flowing from a defendant's deceptive act, even though the conduct of other participants in the fraudulent scheme may have been a subsequent link in the causal chain leading to the plaintiff's securities transaction").

produced documents falsely claiming costs had risen and signed contracts they knew to be backdated in order to disguise the connection between the increase in costs and the purchase of advertising—plainly describe "deceptive devices" under any standard reading of the phrase.

What the Court fails to recognize is that this case is critically different from *Central Bank* because the bank in that case did not engage in any deceptive act and, therefore, did not *itself* violate § 10(b). The Court sweeps aside any distinction, remarking that holding respondents liable would "revive in substance the implied cause of action against all aiders and abettors except those who committed no deceptive act in the process of facilitating the fraud." *Ante*, at 162–163. But the fact that Central Bank engaged in no deceptive conduct whatsoever—in other words, that it was at most an aider and abettor—sharply distinguishes *Central Bank* from cases that do involve allegations of such conduct. 511 U. S., at 167 (stating that the question presented was "whether private civil liability under § 10(b) extends as well to those who do not engage in the manipulative or deceptive practice, but who aid and abet the violation").

The Central Bank of Denver was the indenture trustee for bonds issued by a public authority and secured by liens on property in Colorado Springs. After default, purchasers of $2.1 million of those bonds sued the underwriters, alleging violations of § 10(b); they also named Central Bank as a defendant, contending that the bank's delay in reviewing a suspicious appraisal of the value of the security made it liable as an aider and abettor. *Id.*, at 167–168. The facts of this case would parallel those of *Central Bank* if respondents had, for example, merely delayed sending invoices for set-top boxes to Charter. Conversely, the facts in *Central Bank* would mirror those in the case before us today if the bank had knowingly purchased real estate in wash transactions at above-market prices in order to facilitate the appraiser's overvaluation of the security. *Central Bank*, thus, poses no

obstacle to petitioner's argument that it has alleged a cause of action under § 10(b).

II

The Court's next faulty premise is that petitioner is required to allege that Scientific-Atlanta and Motorola made it "necessary or inevitable for Charter to record the transactions as it did," *ante*, at 161, in order to demonstrate reliance. Because the Court of Appeals did not base its holding on reliance grounds, see 443 F. 3d, at 992, the fairest course to petitioner would be for the majority to remand to the Court of Appeals to determine whether petitioner properly alleged reliance, under a correct view of what § 10(b) covers.[3] Because the Court chooses to rest its holding on an absence of reliance, a response is required.

In *Basic Inc.*, 485 U. S., at 243, we stated that "[r]eliance provides the requisite causal connection between a defendant's misrepresentation and a plaintiff's injury." The Court's view of the causation required to demonstrate reliance is unwarranted and without precedent.

In *Basic Inc.*, we held that the "fraud-on-the-market" theory provides adequate support for a presumption in private securities actions that shareholders (or former shareholders) in publicly traded companies rely on public material misstatements that affect the price of the company's stock. *Id.*, at 248. The holding in *Basic* is surely a sufficient response to the argument that a complaint alleging that deceptive acts

[3]Though respondents did argue to the Court of Appeals that reliance was lacking, see Brief for Appellee Motorola, Inc., in No. 05–1974 (CA8), p. 15, that argument was quite short and was based on an erroneously broad reading of *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164 (1994), as discussed, *supra*, at 169 and this page. The Court of Appeals mentioned reliance only once, stating that respondents "did not issue any misstatement relied upon by the investing public." 443 F. 3d, at 992. Furthermore, that statement was made in the context of the Court of Appeals' holding that a deceptive act must be a misstatement or omission—a holding which the Court unanimously rejects.

which had a material effect on the price of a listed stock should be dismissed because the plaintiffs were not subjectively aware of the deception at the time of the securities' purchase or sale. This Court has not held that investors must be aware of the specific deceptive act which violates § 10b to demonstrate reliance.

The Court is right that a fraud-on-the-market presumption coupled with its view on causation would not support petitioner's view of reliance. The fraud-on-the-market presumption helps investors who cannot demonstrate that they, *themselves*, relied on fraud that reached the market. But that presumption says nothing about causation from the other side: what an individual or corporation must do in order to have "caused" the misleading information that reached the market. The Court thus has it backwards when it first addresses the fraud-on-the-market presumption, rather than the causation required. See *ante*, at 159. The argument is not that the fraud-on-the-market presumption is enough standing alone, but that a correct view of causation coupled with the presumption would allow petitioner to plead reliance.

Lower courts have correctly stated that the causation necessary to demonstrate reliance is not a difficult hurdle to clear in a private right of action under § 10(b). Reliance is often equated with "'transaction causation.'" *Dura Pharmaceuticals, Inc.* v. *Broudo*, 544 U. S. 336, 341, 342 (2005). Transaction causation, in turn, is often defined as requiring an allegation that but for the deceptive act, the plaintiff would not have entered into the securities transaction. See, *e. g.*, *Lentell* v. *Merrill Lynch & Co.*, 396 F. 3d 161, 172 (CA2 2005); *Binder* v. *Gillespie*, 184 F. 3d 1059, 1065–1066 (CA9 1999).

Even if but-for causation, standing alone, is too weak to establish reliance, petitioner has also alleged that respondents proximately caused Charter's misstatement of income; petitioner has alleged that respondents knew their deceptive

acts would be the basis for statements that would influence the market price of Charter stock on which shareholders would rely. Second Amended Consolidated Class Action Complaint ¶¶ 8, 98, 100, 109, App. 19a, 55a–56a, 59a. Thus, respondents' acts had the foreseeable effect of causing petitioner to engage in the relevant securities transactions. The Restatement (Second) of Torts § 533, pp. 72–73 (1977), provides that "[t]he maker of a fraudulent misrepresentation is subject to liability . . . if the misrepresentation, although not made directly to the other, is made to a third person and the maker intends or has reason to expect that its terms will be repeated or its substance communicated to the other." The sham transactions described in the complaint in this case had the same effect on Charter's profit and loss statement as a false entry directly on its books that included $17 million of gross revenues that had not been received. And respondents are alleged to have known that the outcome of their fraudulent transactions would be communicated to investors.

The Court's view of reliance is unduly stringent and unmoored from authority. The Court first says that if petitioner's concept of reliance is adopted the implied cause of action "would reach the whole marketplace in which the issuing company does business." *Ante*, at 160. The answer to that objection is, of course, that liability only attaches when the company doing business with the issuing company has *itself* violated § 10(b).[4] The Court next relies on what it views as a strict division between the "realm of financing business" and the "ordinary business operations." *Ante*, at 161. But petitioner's position does not merge the two: A corporation engaging in a business transaction with a partner who transmits false information to the market is only liable where the

[4] Because the kind of sham transactions alleged in this complaint are unquestionably isolated departures from the ordinary course of business in the American marketplace, it is hyperbolic for the Court to conclude that petitioner's concept of reliance would authorize actions "against the entire marketplace in which the issuing company operates." *Ante*, at 162.

corporation *itself* violates § 10(b). Such a rule does not invade the province of "ordinary" business transactions.

The majority states that "[s]ection 10(b) does not incorporate common-law fraud into federal law," citing *SEC* v. *Zandford*, 535 U. S. 813 (2002). *Ante*, at 162. Of course, not every common-law fraud action that happens to touch upon securities is an action under § 10(b), but the Court's opinion in *Zandford* did not purport to jettison all reference to common-law fraud doctrines from § 10(b) cases. In fact, our prior cases explained that to the extent that "the antifraud provisions of the securities laws are not coextensive with common-law doctrines of fraud," it is because common-law fraud doctrines might be too restrictive. *Herman & MacLean* v. *Huddleston*, 459 U. S. 375, 388–389 (1983). "Indeed, an important purpose of the federal securities statutes was to rectify perceived deficiencies in the available common-law protections by establishing higher standards of conduct in the securities industry." *Id.*, at 389. I, thus, see no reason to abandon common-law approaches to causation in § 10(b) cases.

Finally, the Court relies on the course of action Congress adopted after our decision in *Central Bank* to argue that siding with petitioner on reliance would run contrary to congressional intent. Senate hearings on *Central Bank* were held within one month of our decision.[5] Less than one year later, Senators Dodd and Domenici introduced S. 240, which became the Private Securities Litigation Reform Act of 1995 (PSLRA), 109 Stat. 737.[6] Congress stopped short of undoing *Central Bank* entirely, instead adopting a compromise which restored the authority of the SEC to enforce aiding and abetting liability.[7] A private right of action based on

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[5] See S. Rep. No. 104–98, p. 2 (1995) (hereinafter S. Rep.).

[6] *Id.*, at 1.

[7] The opinion in *Central Bank* discussed only private remedies, but its rationale—that the text of § 10(b) did not cover aiding and abetting—obviously limited the authority of public enforcement agencies. See 511 U. S.,

aiding and abetting violations of § 10(b) was not, however, included in the PSLRA,[8] despite support from Senator Dodd and members of the Senate Subcommittee on Securities.[9] This compromise surely provides no support for extending *Central Bank* in order to immunize an undefined class of actual violators of § 10(b) from liability in private litigation. Indeed, as Members of Congress—including those who rejected restoring a private cause of action against aiders and abettors—made clear, private litigation under § 10(b) continues to play a vital role in protecting the integrity of our securities markets.[10] That Congress chose not to restore

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at 199–200 (STEVENS, J., dissenting); see also S. Rep., at 19 ("The Committee does, however, grant the SEC express authority to bring actions seeking injunctive relief or money damages against persons who knowingly aid and abet primary violators of the securities laws").

[8] PSLRA, § 104, 109 Stat. 757; see also S. Rep., at 19 ("The Committee believes that amending the 1934 Act to provide explicitly for private aiding and abetting liability actions under Section 10(b) would be contrary to S. 240's goal of reducing meritless securities litigation").

[9] See *id.*, at 51 (additional views of Sen. Dodd) ("I am pleased that the Committee bill grants the Securities and Exchange Commission explicit authority to bring actions against those who knowingly aid and abet primary violators. However, I remain concerned about liability in private actions and will continue work with other Committee members on this issue as we move to floor consideration"). Senators Sarbanes, Boxer, and Bryan also submitted additional views in which they stated that "[w]hile the provision in the bill is of some help, the deterrent effect of the securities laws would be strengthened if aiding and abetting liability were restored in private actions as well." *Id.*, at 49.

[10] *Id.*, at 8 ("The success of the U. S. securities markets is largely the result of a high level of investor confidence in the integrity and efficiency of our markets. The SEC enforcement program and the availability of private rights of action together provide a means for defrauded investors to recover damages and a powerful deterrent against violations of the securities laws"); see also *Bateman Eichler, Hill Richards, Inc.* v. *Berner*, 472 U. S. 299, 310 (1985) ("Moreover, we repeatedly have emphasized that implied private actions provide 'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to Commission action'"); Brief for Former SEC Commissioners as *Amici Curiae* 4 ("[L]iability [of the kind at issue here] neither results in undue liability

the aiding and abetting liability removed by *Central Bank* does not mean that Congress wanted to exempt from liability the broader range of conduct that today's opinion excludes.

The Court is concerned that such liability would deter overseas firms from doing business in the United States or "shift securities offerings away from domestic capital markets." *Ante*, at 164. But liability for those who violate § 10(b) "will not harm American competitiveness; in fact, investor faith in the safety and integrity of our markets *is* their strength. The fact that our markets are the safest in the world has helped make them the strongest in the world." Brief for Former SEC Commissioners as *Amici Curiae* 9.

Accordingly, while I recognize that the *Central Bank* opinion provides a precedent for judicial policymaking decisions in this area of the law, I respectfully dissent from the Court's continuing campaign to render the private cause of action under § 10(b) toothless. I would reverse the decision of the Court of Appeals.

III

While I would reverse for the reasons stated above, I must also comment on the importance of the private cause of action that Congress implicitly authorized when it enacted the Securities Exchange Act of 1934. A theme that underlies the Court's analysis is its mistaken hostility toward the § 10(b) private cause of action.[11] *Ante*, at 164–165. The Court's current view of implied causes of action is that they

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exposure for non-issuers, nor an undue burden upon capital formation. Holding liable wrongdoers who actively engage in fraudulent conduct that lacks a legitimate business purpose does not hinder, but rather enhances, the integrity of our markets and our economy. We believe that the integrity of our securities markets is their strength. Investors, both domestic and foreign, trust that fraud is not tolerated in our nation's securities markets and that strong remedies exist to deter and protect against fraud and to recompense investors when it occurs").

[11] The Court does concede that Congress has now ratified the private cause of action in the PSLRA. See *ante*, at 165.

are merely a "relic" of our prior "heady days." *Correctional Services Corp.* v. *Malesko*, 534 U. S. 61, 75 (2001) (SCALIA, J., concurring). Those "heady days" persisted for 200 years.

During the first two centuries of this Nation's history much of our law was developed by judges in the common-law tradition. A basic principle animating our jurisprudence was enshrined in state constitution provisions guaranteeing, in substance, that "every wrong shall have a remedy."[12]

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[12] Today, the guarantee of a remedy for every injury appears in nearly three-quarters of state constitutions. Ala. Const., Art. I, §13; Ark. Const., Art. 2, §13; Colo. Const., Art. II, §6; Conn. Const., Art. I, §10; Del. Const., Art. I, §9; Fla. Const., Art. I, §21; Idaho Const., Art. I, §18; Ill. Const., Art. I, §12; Ind. Const., Art. I, §12; Kan. Const., Bill of Rights, §18; Ky. Const., §14; La. Const., Art. I, §22; Me. Const., Art. I, §19; Md. Const., Declaration of Rights, Art. 19; Mass. Const., pt. I, Art. 11; Minn. Const., Art. 1, §8; Miss. Const., Art. III, §24; Mo. Const., Art. I, §14; Mont. Const., Art. II, §16; Neb. Const., Art. I, §13; N. H. Const., pt. I, Art. 14; N. C. Const., Art. I, §18; N. D. Const., Art. I, §9; Ohio Const., Art. I, §16; Okla. Const., Art. 2, §6; Ore. Const., Art. I, §10; Pa. Const., Art. I, §11; R. I. Const., Art. I, §5; S. C. Const., Art. I, §9; S. D. Const., Art. VI, §20; Tenn. Const., Art. I, §17; Tex. Const., Art. I, §13; Utah Const., Art. I, §11; Vt. Const., ch. I, Art. 4; W. Va. Const., Art. III, §17; Wis. Const., Art. I, §9; Wyo. Const., Art. I, §8; see also Phillips, The Constitutional Right to a Remedy, 78 N. Y. U. L. Rev. 1309, 1310, n. 6 (2003) (hereinafter Phillips).

The concept of a remedy for every wrong most clearly emerged from Sir Edward Coke's scholarship on Magna Carta. See 1 Second Part of the Institutes of the Laws of England (1797). At the time of the ratification of the United States Constitution, Delaware, Massachusetts, Maryland, New Hampshire, and North Carolina had all adopted constitutional provisions reflecting the provision in Coke's scholarship. Del. Declaration of Rights and Fundamental Rules §12 (1776), reprinted in 2 W. Swindler, Sources and Documents of United States Constitutions 198 (1973) (hereinafter Swindler); Mass. Const., pt. I, Art. XI (1780), reprinted in 3 Federal and State Constitutions, Colonial Charters, and Other Organic Laws 1891 (F. Thorpe ed. 1909) (reprinted 1993) (hereinafter Thorpe); Md. Const., Declaration of Rights, Art. XVII (1776), in *id.*, at 1688; N. H. Const., Art. XIV (1784), in 4 *id.*, at 2455; N. C. Const., Declaration of Rights, Art. XIII (1776), in 5 *id.*, at 2787, 2788; see also Phillips 1323–1324. Pennsylvania's Constitution of 1790 contains a guarantee. Pa. Const., Art. IX, §11, in 5

Fashioning appropriate remedies for the violation of rules of law designed to protect a class of citizens was the routine business of judges. See *Marbury* v. *Madison*, 1 Cranch 137, 166 (1803). While it is true that in the early days state law was the source of most of those rules, throughout our history—until 1975—the same practice prevailed in federal courts with regard to federal statutes that left questions of remedy open for judges to answer. In *Texas & Pacific R. Co.* v. *Rigsby*, 241 U. S. 33, 39 (1916), this Court stated the following:

> "A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied, according to a doctrine of the common law expressed in 1 Com. Dig., *tit.* Action upon Statute (F), in these words: 'So, in every case, where a statute enacts, or prohibits a thing for the benefit of a person, he shall have a remedy upon the same statute for the thing enacted for his advantage, or for the recompense of a wrong done to him contrary to the said law.' (*Per* Holt, C. J., *Anon.*, 6 Mod. 26, 27.)"

Judge Friendly succinctly described the post-*Rigsby*, pre-1975 practice in his opinion in *Leist* v. *Simplot*, 638 F. 2d 283, 298–299 (CA2 1980):

> "Following *Rigsby* the Supreme Court recognized implied causes of action on numerous occasions, see, e. g., *Wyandotte Transportation Co. v. United States*, 389 U. S. 191 . . . (1967) (sustaining implied cause of action by United States for damages under Rivers and Harbors Act for removing negligently sunk vessel despite express remedies of *in rem* action and criminal penalties); *United States v. Republic Steel Corp.*, 362 U. S. 482 . . . (1960) (sustaining implied cause of action by United

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Thorpe 3101. Connecticut's 1818 Constitution, Art. I, § 12, contained such a provision. Reprinted in 2 Swindler 145.

> States for an injunction under the Rivers and Harbors Act); *Tunstall v. Locomotive Firemen & Enginemen*, 323 U. S. 210 . . . (1944) (sustaining implied cause of action by union member against union for discrimination among members despite existence of Board of Mediation); *Sullivan v. Little Hunting Park, Inc.*, 396 U. S. 229 . . . (1969) (sustaining implied private cause of action under 42 U. S. C. § 1982); *Allen v. State Board of Elections*, 393 U. S. 544 . . . (1969) (sustaining implied private cause of action under § 5 of the Voting Rights Act despite the existence of a complex regulatory scheme and explicit rights of action in the Attorney General); and, of course, the aforementioned decisions under the securities laws. As the Supreme Court itself has recognized, the period of the 1960's and early 1970's was one in which the 'Court had consistently found implied remedies.' *Cannon v. University of Chicago*, 441 U. S. 677, 698 . . . (1979)."

In a law-changing opinion written by Justice Brennan in 1975, the Court decided to modify its approach to private causes of action. *Cort* v. *Ash*, 422 U. S. 66 (constraining courts to use a strict four-factor test to determine whether Congress intended a private cause of action). A few years later, in *Cannon* v. *University of Chicago*, 441 U. S. 677 (1979), we adhered to the strict approach mandated by *Cort* v. *Ash* in 1975, but made it clear that "our evaluation of congressional action in 1972 must take into account its contemporary legal context." 441 U. S., at 698–699. That context persuaded the majority that Congress had intended the courts to authorize a private remedy for members of the protected class.

Until *Central Bank*, the federal courts continued to enforce a broad implied cause of action for the violation of statutes enacted in 1933 and 1934 for the protection of investors. As Judge Friendly explained:

"During the late 1940's, the 1950's, the 1960's and the early 1970's there was widespread, indeed almost general, recognition of implied causes of action for damages under many provisions of the Securities Exchange Act, including not only the antifraud provisions, §§ 10 and 15(c)(1), see *Kardon v. National Gypsum Co.*, 69 F. Supp. 512, 513–14 (E.D.Pa.1946); *Fischman v. Raytheon Mfg. Co.*, 188 F. 2d 783, 787 (2 Cir. 1951) (Frank, J.); *Fratt v. Robinson*, 203 F. 2d 627, 631–33 (9 Cir. 1953), but many others. These included the provision, § 6(a)(1), requiring securities exchanges to enforce compliance with the Act and any rule or regulation made thereunder, see *Baird v. Franklin*, 141 F. 2d 238, 239, 240, 244–45 (2 Cir.), *cert. denied*, 323 U. S. 737 . . . (1944), and provisions governing the solicitation of proxies, see *J. I. Case Co. v. Borak*, 377 U. S. 426, 431–35 . . . (1964). . . . Writing in 1961, Professor Loss remarked with respect to violations of the antifraud provisions that with one exception 'not a single judge has expressed himself to the contrary.' 3 Securities Regulation 1763–64. See also Bromberg & Lowenfels, [Securities Fraud & Commodities Fraud] § 2.2 (462) [(1979)] (describing 1946–1974 as the 'expansion era' in implied causes of action under the securities laws). When damage actions for violation of § 10(b) and Rule 10b–5 reached the Supreme Court, the existence of an implied cause of action was not deemed worthy of extended discussion. *Superintendent of Insurance v. Bankers Life & Casualty Co.*, 404 U. S. 6 . . . (1971)." *Leist*, 638 F. 2d, at 296–297 (footnote omitted).

In light of the history of court-created remedies and specifically the history of implied causes of action under § 10(b), the Court is simply wrong when it states that Congress did not impliedly authorize this private cause of action "when it first enacted the statute." *Ante*, at 167. Courts near in

time to the enactment of the securities laws recognized that the principle in *Rigsby* applied to the securities laws.[13] Congress enacted § 10(b) with the understanding that federal courts respected the principle that every wrong would have a remedy. Today's decision simply cuts back further on Congress' intended remedy. I respectfully dissent.

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[13] See, *e. g.*, *Slavin* v. *Germantown Fire Ins. Co.*, 174 F. 2d 799 (CA3 1949); *Baird* v. *Franklin*, 141 F. 2d 238, 244–245 (CA2) ("The fact that the statute provides no machinery or procedure by which the individual right of action can proceed is immaterial. It is well established that members of a class for whose protection a statutory duty is created may sue for injuries resulting from its breach and that the common law will supply a remedy if the statute gives none"), cert. denied, 323 U. S. 737 (1944); *Kardon* v. *National Gypsum Co.*, 69 F. Supp. 512, 514 (ED Pa. 1946) ("[T]he right to recover damages arising by reason of violation of a statute . . . is so fundamental and so deeply ingrained in the law that where it is not expressly denied the intention to withhold it should appear very clearly and plainly").

Syllabus

KNIGHT, TRUSTEE OF WILLIAM L. RUDKIN TESTAMENTARY TRUST *v.* COMMISSIONER OF INTERNAL REVENUE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 06–1286. Argued November 27, 2007—Decided January 16, 2008

Individuals may subtract from their adjusted gross income certain itemized deductions, 26 U. S. C. §63(d), but only to the extent the deductions exceed 2% of adjusted gross income, §67(a). A trust may also take such deductions subject to the 2% floor, §67(e), except that when the relevant cost is "paid or incurred in connection with the administration of the . . . trust" and "would not have been incurred if the property were not held in such trust," the cost may be deducted without regard to the floor, §67(e)(1). After petitioner Knight (Trustee), the trustee of a testamentary trust (Trust), hired the Warfield firm to advise as to Trust investments, the Trust deducted in full on its fiduciary income tax return the investment advisory fees paid to Warfield. Respondent Commissioner found the fees subject to the 2% floor and therefore allowed the deduction only to the extent the fees exceeded 2% of the Trust's adjusted gross income. The Tax Court decided for the Commissioner, and the Second Circuit affirmed, holding that because such fees were costs of a type that *could* be incurred if the property were held individually rather than in trust, their deduction by the Trust was subject to the 2% floor.

Held: Investment advisory fees generally are subject to the 2% floor when incurred by a trust. Pp. 187–195.

(a) In asking whether a particular type of cost incurred by a trust "would *not* have been incurred" if the property were held by an individual, §67(e)(1) excepts from the 2% floor only those costs that it would be uncommon (or unusual, or unlikely) for such a hypothetical individual to incur. The question whether a trust-related expense is fully deductible turns on a prediction about what would happen if a fact were changed—specifically, if the property were held by an individual rather than by a trust. Predictions are based on what would customarily or commonly occur. Thus, in the context of making such a prediction, when there is uncertainty about the answer, the word "would" is best read to express concepts such as custom, habit, natural disposition, or probability. Although the statutory text does not expressly ask whether expenses are "customarily" incurred outside of trusts, that is

the direct import of the language in context. The Second Circuit's approach, which asks whether the cost at issue *could* have been incurred by an individual, flies in the face of the statutory language. Had Congress intended the Court of Appeals' reading, it easily could have replaced "would" with "could" in §67(e)(1), and presumably would have. The Trustee's argument that the proper inquiry is whether a particular expense of a particular trust was caused by the fact that the property was held in trust fails because the statute by its terms does not establish a straightforward causation test, but instead looks to the counterfactual question whether an *individual* would have incurred such costs in the *absence* of a trust. Further, under the Trustee's approach, *every* trust-related expense would be fully deductible, thus allowing the exception to the 2% floor in §67(e)(1) to swallow the general rule. Pp. 187–192.

(b) The Trust's investment advisory fees are subject to the 2% floor. The Trustee—who has the burden of establishing entitlement to the deduction, see, *e. g.*, *INDOPCO, Inc.* v. *Commissioner*, 503 U. S. 79, 84—has not demonstrated that it is uncommon or unusual for individuals to hire an investment adviser. His argument is that individuals cannot incur trust investment advisory fees, not that individuals do not commonly incur investment advisory fees. Indeed, his essential point is that he engaged an investment adviser because of his fiduciary duties under Connecticut law, which requires a trustee to invest and manage trust assets "as a prudent investor would." This prudent investor standard plainly does not refer to a prudent *trustee*, but looks instead to what a prudent investor with the same investment objectives handling his own affairs would do—*i. e.*, a prudent individual investor. Because a hypothetical prudent investor in petitioner's position would reasonably have solicited investment advice, it is quite difficult to say that the investment advisory fees "would not have been incurred"—*i. e.*, that it would be unusual or uncommon for such fees to have been incurred—if the property were held by an individual investor with the same objectives as the Trust in handling his own affairs. While Congress's decision to phrase the pertinent inquiry in terms of a prediction about a hypothetical situation inevitably entails some uncertainty, that is no excuse for judicial amendment of the statute. The Code elsewhere poses similar questions, see, *e. g.*, §§162(a), 212, and the inquiry is in any event what §67(e)(1) requires. Although some trust-related investment advisory fees may be fully deductible if an investment adviser were to impose a special, additional charge applicable only to its fiduciary accounts, there is nothing in the record to suggest that Warfield did so, or treated the Trust any differently than it would have treated an individual with similar objectives, because of the Trustee's fiduciary obligations. Nor

does the Trust assert that its investment objectives or balancing of competing interests were so distinctive that any comparison with those of an individual investor would be improper. Pp. 192–195.

467 F. 3d 149, affirmed.

ROBERTS, C. J., delivered the opinion for a unanimous Court.

Peter J. Rubin argued the cause for petitioner. With him on the briefs were *Cornelia T. L. Pillard*, *Walter Dellinger*, *Carol A. Cantrell*, *Michael D. Martin*, and *Jonathan S. Massey*.

Eric D. Miller argued the cause for respondent. With him on the brief were *Solicitor General Clement*, *Acting Assistant Attorney General Morrison*, *Deputy Solicitor General Hungar*, *Acting Deputy Assistant Attorney General Rothenberg*, *Anthony T. Sheehan*, and *Donald L. Korb*.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Under the Internal Revenue Code, individuals may subtract from their adjusted gross income certain itemized deductions, but only to the extent the deductions exceed 2% of adjusted gross income. A trust may also claim those deductions, also subject to the 2% floor, except that costs incurred in the administration of the trust, which would not have been incurred if the trust property were not held by a trust, may be deducted without regard to the floor. In the case of individuals, investment advisory fees are subject to the 2% floor; the question presented is whether such fees are also subject to the floor when incurred by a trust. We hold that they generally are and therefore affirm the judgment below, albeit for different reasons than those given by the Court of Appeals.

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*Briefs of *amici curiae* were filed for the American Bankers Association et al. by *Gregory F. Taylor* and *Lisa Bleier*; and for the Tax Section of The Florida Bar by *Angela C. Vigil*, *Jonathan Blattmachr*, and *David Pratt*.

I

The Internal Revenue Code imposes a tax on the "taxable income" of both individuals and trusts. 26 U. S. C. §1(a). The Code instructs that the calculation of taxable income begins with a determination of "gross income," capaciously defined as "all income from whatever source derived." §61(a). "Adjusted gross income" is then calculated by subtracting from gross income certain "above-the-line" deductions, such as trade and business expenses and losses from the sale or exchange of property. §62(a). Finally, taxable income is calculated by subtracting from adjusted gross income "itemized deductions"—also known as "below-the-line" deductions—defined as all allowable deductions other than the "above-the-line" deductions identified in §62(a) and the deduction for personal exemptions allowed under §151 (2000 ed. and Supp. V). §63(d) (2000 ed.).

Before the passage of the Tax Reform Act of 1986, 100 Stat. 2085, below-the-line deductions were deductible in full. This system resulted in significant complexity and potential for abuse, requiring "extensive [taxpayer] recordkeeping with regard to what commonly are small expenditures," as well as "significant administrative and enforcement problems for the Internal Revenue Service." H. R. Rep. No. 99–426, p. 109 (1985).

In response, Congress enacted what is known as the "2% floor" by adding §67 to the Code. Section 67(a) provides that "the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income." The term "miscellaneous itemized deductions" is defined to include all itemized deductions other than certain ones specified in §67(b). Investment advisory fees are deductible pursuant to 26 U. S. C. §212. Because §212 is not listed in §67(b) as one of the categories of expenses that may be deducted in full, such fees are "miscellaneous itemized deduc-

tions" subject to the 2% floor. 26 CFR §1.67–1T(a)(1)(ii) (2007).

Section 67(e) makes the 2% floor generally applicable not only to individuals but also to estates and trusts,[1] with one exception relevant here. Under this exception, "the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that . . . the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such trust or estate . . . shall be treated as allowable" and not subject to the 2% floor. §67(e)(1).

Petitioner Michael J. Knight is the trustee of the William L. Rudkin Testamentary Trust, established in the State of Connecticut in 1967. In 2000, the Trustee hired Warfield Associates, Inc., to provide advice with respect to investing the Trust's assets. At the beginning of the tax year, the Trust held approximately $2.9 million in marketable securities, and it paid Warfield $22,241 in investment advisory fees for the year. On its fiduciary income tax return for 2000, the Trust reported total income of $624,816, and it deducted in full the investment advisory fees paid to Warfield. After conducting an audit, respondent Commissioner of Internal Revenue found that these investment advisory fees were miscellaneous itemized deductions subject to the 2% floor. The Commissioner therefore allowed the Trust to deduct the investment advisory fees, which were the only claimed deductions subject to the floor, only to the extent that they exceeded 2% of the Trust's adjusted gross income. The discrepancy resulted in a tax deficiency of $4,448.

The Trust filed a petition in the United States Tax Court seeking review of the assessed deficiency. It argued that the Trustee's fiduciary duty to act as a "prudent investor"

[1] Because this case is only about trusts, we generally refer to trusts throughout, but the analysis applies equally to estates.

under the Connecticut Uniform Prudent Investor Act, Conn. Gen. Stat. §§45a–541a to 45a–541*l* (2007),[2] required the Trustee to obtain investment advisory services, and therefore to pay investment advisory fees. The Trust argued that such fees are accordingly unique to trusts and therefore fully deductible under 26 U. S. C. §67(e)(1). The Tax Court rejected this argument, holding that §67(e)(1) allows full deductibility only for expenses that are not commonly incurred outside the trust setting. Because investment advisory fees are commonly incurred by individuals, the Tax Court held that they are subject to the 2% floor when incurred by a trust. *Rudkin Testamentary Trust* v. *Commissioner*, 124 T. C. 304, 309–311 (2005).

The Trust appealed to the United States Court of Appeals for the Second Circuit. The Court of Appeals concluded that, in determining whether costs such as investment advisory fees are fully deductible or subject to the 2% floor, §67(e) "directs the inquiry toward the counterfactual condition of assets held individually instead of in trust," and requires "an objective determination of whether the particular cost is one that is peculiar to trusts and one that individuals are incapable of incurring." 467 F. 3d 149, 155, 156 (2006). The court held that because investment advisory fees were "costs of a type that *could* be incurred if the property were held individually rather than in trust," deduction of such fees by the Trust was subject to the 2% floor. *Id.*, at 155–156.

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[2] Forty-four States and the District of Columbia have adopted versions of the Uniform Prudent Investor Act. See 7B U. L. A. 1–2 (2006) (listing States that have enacted the Uniform Prudent Investor Act). Five of the remaining six States have adopted their own versions of the prudent investor standard. See Del. Code Ann., Tit. 12, §3302 (1995 ed. and 2006 Supp.); Ga. Code Ann. §53–12–287 (1997); La. Rev. Stat. Ann. §9:2127 (West 2005); Md. Est. & Trusts Code Ann. §15–114 (Lexis 2001); S. D. Codified Laws §55–5–6 (2004). Kentucky, the only remaining State, applies the prudent investor standard only in certain circumstances. See Ky. Rev. Stat. Ann. §286.3–277 (Lexis 2007 Cum. Supp.); §§386.454(1), 386.502 (Supp. 2007).

The Courts of Appeals are divided on the question presented. The Sixth Circuit has held that investment advisory fees are fully deductible. *O'Neill* v. *Commissioner*, 994 F. 2d 302, 304 (1993). In contrast, both the Fourth and Federal Circuits have held that such fees are subject to the 2% floor, because they are "commonly" or "customarily" incurred outside of trusts. See *Scott* v. *United States*, 328 F. 3d 132, 140 (CA4 2003); *Mellon Bank, N. A.* v. *United States*, 265 F. 3d 1275, 1281 (CA Fed. 2001). The Court of Appeals below came to the same conclusion, but as noted announced a more exacting test, allowing "full deduction only for those costs that *could not* have been incurred by an individual property owner." 467 F. 3d, at 156 (emphasis added). We granted the Trustee's petition for certiorari to resolve the conflict, 551 U. S. 1144 (2007), and now affirm.

II

"We start, as always, with the language of the statute." *Williams* v. *Taylor*, 529 U. S. 420, 431 (2000). Section 67(e) sets forth a general rule: "[T]he adjusted gross income of [a] . . . trust shall be computed in the same manner as in the case of an individual." That is, trusts can ordinarily deduct costs subject to the same 2% floor that applies to individuals' deductions. Section 67(e) provides for an exception to the 2% floor when two conditions are met. First, the relevant cost must be "paid or incurred in connection with the administration of the . . . trust." §67(e)(1). Second, the cost must be one "which would not have been incurred if the property were not held in such trust." *Ibid.*

In applying the statute, the Court of Appeals below asked whether the cost at issue *could* have been incurred by an individual.[3] This approach flies in the face of the statutory

[3] The Solicitor General embraces this position in this Court, arguing that the Court of Appeals' approach represents the best reading of the statute and establishes an easily administrable rule. See Brief for Respondent 17–20, 22. Indeed, after the Court of Appeals' decision, the Commissioner

language. The provision at issue asks whether the costs "would not have been incurred if the property were not held" in trust, *ibid.*, not, as the Court of Appeals would have it, whether the costs "could not have been incurred" in such a case, 467 F. 3d, at 156. The fact that an individual could not do something is one reason he would not, but not the only possible reason. If Congress had intended the Court of Appeals' reading, it easily could have replaced "would" in the statute with "could," and presumably would have. The fact that it did not adopt this readily available and apparent alternative strongly supports rejecting the Court of Appeals' reading.[4]

Moreover, if the Court of Appeals' reading were correct, it is not clear why Congress would have included in the stat-

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adopted that court's reading of the statute in a proposed regulation. See Section 67 Limitations on Estates or Trusts, 72 Fed. Reg. 41245 (2007) (notice of proposed rulemaking) (a trust-related cost is exempted from the 2% floor only if "an individual *could not* have incurred that cost in connection with property not held in an estate or trust" (emphasis added)). The Government did not advance this argument before the Court of Appeals. See Brief for Appellee in No. 05–5151–AG (CA2), pp. 3–4, 22–24. In fact, the notice of proposed rulemaking appears to be the first time the Government has ever taken this position, and we are the first Court to which the argument has been made in a brief. See Brief for United States in *Mellon Bank, N. A.* v. *United States*, No. 01–5015 (CA Fed.), p. 27 ("[I]f a trust-related administrative expense is also customarily or habitually incurred outside of trusts, then it is subject to the two-percent floor"); Brief for United States in *Scott* v. *United States*, No. 02–1464 (CA4), p. 27 (same).

[4] In pressing the Court of Appeals' approach, the Solicitor General argues that "to say that a team would not have won the game if it were not for the quarterback's outstanding play is to say that the team could not have won without the quarterback." Brief for Respondent 19. But the Solicitor General simply posits the truth of a proposition—that the team would not have won the game if it were not for the quarterback's outstanding play—and then states its equivalent. The statute, in contrast, does not posit any proposition. Rather, it asks a question: whether a particular cost *would* have been incurred if the property were held by an individual instead of a trust.

ute the first clause of §67(e)(1). If the only costs that are fully deductible are those that *could* not be incurred outside the trust context—that is, that could *only* be incurred by trusts—then there would be no reason to place the further condition on full deductibility that the costs be "paid or incurred in connection with the administration of the . . . trust," §67(e)(1). We can think of no expense that could be incurred exclusively by a trust but would nevertheless *not* be "paid or incurred in connection with" its administration.

The Trustee argues that the exception in §67(e)(1) "establishes a straightforward causation test." Brief for Petitioner 22. The proper inquiry, the Trustee contends, is "whether a particular expense of a particular trust or estate was caused by the fact that the property was held in the trust or estate." *Ibid.* Investment advisory fees incurred by a trust, the argument goes, meet this test because these costs are caused by the trustee's obligation "to obtain advice on investing trust assets in compliance with the Trustees' particular fiduciary duties." *Ibid.* We reject this reading as well.

On the Trustee's view, the statute operates only to distinguish costs that are incurred by virtue of a trustee's fiduciary duties from those that are not. But all (or nearly all) of a trust's expenses are incurred because the trustee has a duty to incur them; otherwise, there would be no reason for the trust to incur the expense in the first place. See G. Bogert & G. Bogert, Law of Trusts and Trustees §801, p. 134 (2d rev. ed. 1981) ("[T]he payment for expenses must be reasonably necessary to facilitate administration of the trust"). As an example of a type of trust-related expense that would be subject to the 2% floor, the Trustee offers "expenses for routine maintenance of real property" held by a trust. Brief for Petitioner 23. But such costs would appear to be fully deductible under the Trustee's own reading because a trustee is obligated to incur maintenance expenses in light of the fiduciary duty to maintain trust property. See 1 Re-

statement (Second) of Trusts § 176, p. 381 (1957) ("The trustee is under a duty to the beneficiary to use reasonable care and skill to preserve the trust property").

Indeed, the Trustee's formulation of its argument is circular: "Trust investment advice fees are caused by the fact the property is held in trust." Brief for Petitioner 19. But "trust investment advice fees" are only aptly described as such because the property is held in trust; the statute asks whether such costs would be incurred by an individual if the property were not. Even when there is a clearly analogous category of costs that would be incurred by individuals, the Trustee's reading would exempt most or all trust costs as fully deductible merely because they derive from a trustee's fiduciary duty. Adding the modifier "trust" to costs that otherwise would be incurred by an individual surely cannot be enough to escape the 2% floor.

What is more, if the Trustee's position were correct, then only the first clause of § 67(e)(1)—providing that the cost be "incurred in connection with the administration of the . . . trust"—would be necessary. The statute's second, limiting condition—that the cost also be one "which would not have been incurred if the property were not held in such trust"—would do no work; we see no difference in saying, on the one hand, that costs are "caused by" the fact that the property is held in trust and, on the other, that costs are incurred "in connection with the administration" of the trust. Thus, accepting the Trustee's approach "would render part of the statute entirely superfluous, something we are loath to do." *Cooper Industries, Inc.* v. *Aviall Services, Inc.*, 543 U. S. 157, 166 (2004).

The Trustee's reading is further undermined by our inclination, "[i]n construing provisions . . . in which a general statement of policy is qualified by an exception, [to] read the exception narrowly in order to preserve the primary operation of the provision." *Commissioner* v. *Clark*, 489 U. S. 726, 739 (1989). As we have said, § 67(e) sets forth a general

rule for purposes of the 2% floor established in §67(a): "For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual." Under the Trustee's reading, §67(e)(1)'s exception would swallow the general rule; most (if not all) expenses incurred by a trust would be fully deductible. "Given that Congress has enacted a general rule . . . , we should not eviscerate that legislative judgment through an expansive reading of a somewhat ambiguous exception." *Ibid.*

More to the point, the statute by its terms does not "establis[h] a straightforward causation test," Brief for Petitioner 22, but rather invites a hypothetical inquiry into the treatment of the property were it held outside a trust. The statute does not ask whether a cost was incurred *because* the property is held by a trust; it asks whether a particular cost "would not have been incurred if the property were not held in such trust," §67(e)(1). "Far from examining the nature of the cost at issue from the perspective of whether it was caused by the trustee's duties, the statute instead looks to the counterfactual question of whether *individuals* would have incurred such costs in the *absence* of a trust." Brief for Respondent 9.

This brings us to the test adopted by the Fourth and Federal Circuits: Costs incurred by trusts that escape the 2% floor are those that would not "commonly" or "customarily" be incurred by individuals. See *Scott*, 328 F. 3d, at 140 ("Put simply, trust-related administrative expenses are subject to the 2% floor if they constitute expenses commonly incurred by individual taxpayers"); *Mellon Bank*, 265 F. 3d, at 1281 (§67(e) "treats as fully deductible only those trust-related administrative expenses that are unique to the administration of a trust and not customarily incurred outside of trusts"). The Solicitor General also accepts this view as an alternative reading of the statute. See Brief for Respondent 20–21. We agree with this approach.

The question whether a trust-related expense is fully deductible turns on a prediction about what would happen if a fact were changed—specifically, if the property were held by an individual rather than by a trust. In the context of making such a prediction, when there is uncertainty about the answer, the word "would" is best read as "express[ing] concepts such as custom, habit, natural disposition, or probability." *Scott*, *supra*, at 139. See Webster's Third New International Dictionary 2637–2638 (1993); American Heritage Dictionary 2042, 2059 (3d ed. 1996). The Trustee objects that the statutory text "does not ask whether expenses are 'customarily' incurred outside of trusts," Reply Brief for Petitioner 15, but that is the direct import of the language in context. The text requires determining what would happen if a fact were changed; such an exercise necessarily entails a prediction; and predictions are based on what would customarily or commonly occur. Thus, in asking whether a particular type of cost "would *not* have been incurred" if the property were held by an individual, § 67(e)(1) excepts from the 2% floor only those costs that it would be *un*common (or unusual, or unlikely) for such a hypothetical individual to incur.

III

Having decided on the proper reading of § 67(e)(1), we come to the application of the statute to the particular question in this case: whether investment advisory fees incurred by a trust escape the 2% floor.

It is not uncommon or unusual for individuals to hire an investment adviser. Certainly the Trustee, who has the burden of establishing its entitlement to the deduction, has not demonstrated that it is. See *INDOPCO, Inc.* v. *Commissioner*, 503 U. S. 79, 84 (1992) (noting the "'familiar rule' that 'an income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed deduction is on the taxpayer'" (quoting *Interstate Transit Lines* v. *Commissioner*, 319 U. S. 590, 593 (1943)));

Tax Court Rule 142(a)(1) (stating that the "burden of proof shall be upon the petitioner," with certain exceptions not relevant here). The Trustee's argument is that individuals cannot incur trust investment advisory fees, not that individuals do not commonly incur investment advisory fees.

Indeed, the essential point of the Trustee's argument is that he engaged an investment adviser because of his fiduciary duties under Connecticut's Uniform Prudent Investor Act, Conn. Gen. Stat. §45a–541a(a) (2007). The Act eponymously requires trustees to follow the "prudent investor rule." See n. 2, *supra*. To satisfy this standard, a trustee must "invest and manage trust assets *as a prudent investor would*, by considering the purposes, terms, distribution requirements and other circumstances of the trust." §45a–541b(a) (emphasis added). The prudent investor standard plainly does not refer to a prudent *trustee*; it would not be very helpful to explain that a trustee should act as a prudent trustee would. Rather, the standard looks to what a prudent investor with the same investment objectives handling his own affairs would do—*i. e.*, a prudent individual investor. See Restatement (Third) of Trusts (Prudent Investor Rule) Reporter's Notes on §227, p. 58 (1990) ("The prudent investor rule of this Section has its origins in the dictum of Harvard College v. Amory, 9 Pick. (26 Mass.) 446, 461 (1830), stating that trustees must 'observe how men of prudence, discretion, and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested' "). See also, *e. g.*, *In re Musser's Estate*, 341 Pa. 1, 9–10, 17 A. 2d 411, 415 (1941) (noting the "general rule" that "a trustee must exercise such prudence and diligence in conducting the affairs of the trust as men of average diligence and discretion would employ in their own affairs"). And we have no reason to doubt the Trustee's claim that a hypothetical prudent investor in his position would have solicited investment advice,

just as he did. Having accepted all this, it is quite difficult to say that investment advisory fees "would not have been incurred"—that is, that it would be unusual or uncommon for such fees to have been incurred—if the property were held by an individual investor with the same objectives as the Trust in handling his own affairs.

We appreciate that the inquiry into what is common may not be as easy in other cases, particularly given the absence of regulatory guidance. But once you depart in the name of ease of administration from the language chosen by Congress, there is more than one way to skin the cat: The Trustee raises administrability concerns in support of his causation test, Reply Brief for Petitioner 6, but so does the Government in explaining why it prefers the Court of Appeals' approach to the one it has successfully advanced before the Tax Court and two Federal Circuits. Congress's decision to phrase the pertinent inquiry in terms of a prediction about a hypothetical situation inevitably entails some uncertainty, but that is no excuse for judicial amendment of the statute. The Code elsewhere poses similar questions—such as whether expenses are "ordinary," see §§ 162(a), 212; see also *Deputy, Administratrix* v. *Du Pont*, 308 U. S. 488, 495 (1940) (noting that "[o]rdinary has the connotation of normal, usual, or customary")—and the inquiry is in any event what § 67(e)(1) requires.

As the Solicitor General concedes, some trust-related investment advisory fees may be fully deductible "if an investment advisor were to impose a special, additional charge applicable only to its fiduciary accounts." Brief for Respondent 25. There is nothing in the record, however, to suggest that Warfield charged the Trustee anything extra, or treated the Trust any differently than it would have treated an individual with similar objectives, because of the Trustee's fiduciary obligations. See App. 24–27. It is conceivable, moreover, that a trust may have an unusual investment objective, or may require a specialized balancing of the

interests of various parties, such that a reasonable comparison with individual investors would be improper. In such a case, the incremental cost of expert advice beyond what would normally be required for the ordinary taxpayer would not be subject to the 2% floor. Here, however, the Trust has not asserted that its investment objective or its requisite balancing of competing interests was distinctive. Accordingly, we conclude that the investment advisory fees incurred by the Trust are subject to the 2% floor.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

Syllabus

NEW YORK STATE BOARD OF ELECTIONS ET AL. *v.* LOPEZ TORRES ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 06–766. Argued October 3, 2007—Decided January 16, 2008

Under New York's current Constitution, State Supreme Court Justices are elected in each of the State's judicial districts. Since 1921, New York's election law has required parties to select their nominees by a convention composed of delegates elected by party members. An individual running for delegate must submit a 500-signature petition collected within a specified time. The convention's nominees appear automatically on the general-election ballot, along with any independent candidates who meet certain statutory requirements. Respondents filed suit, seeking, *inter alia*, a declaration that New York's convention system violates the First Amendment rights of challengers running against candidates favored by party leaders and an injunction mandating a direct primary election to select Supreme Court nominees. The Federal District Court issued a preliminary injunction, pending the enactment of a new state statutory scheme, and the Second Circuit affirmed.

Held: New York's system of choosing party nominees for the State Supreme Court does not violate the First Amendment. Pp. 202–209.

(a) Because a political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform, a State's power to prescribe party use of primaries or conventions to select nominees for the general election is not without limits. *California Democratic Party* v. *Jones*, 530 U. S. 567, 577. However, respondents, who claim their own associational right to join and have influence in the party, are in no position to rely on the right that the First Amendment confers on political parties. Pp. 202–204.

(b) Respondents' contention that New York's electoral system does not assure them a fair chance of prevailing in their parties' candidate-selection process finds no support in this Court's precedents. Even if *Kusper* v. *Pontikes*, 414 U. S. 51, 57, which acknowledged an individual's associational right to vote in a party primary without undue state-imposed impediment, were extended to cover the right to run in a party primary, the New York law's signature and deadline requirements are entirely reasonable. A State may demand a minimum degree of sup-

port for candidate access to a ballot, see *Jenness* v. *Fortson*, 403 U. S. 431, 442. P. 204.

(c) Respondents' real complaint is that the convention process following the delegate election does not give them a realistic chance to secure their party's nomination because the party leadership garners more votes for its delegate slate and effectively determines the nominees. This says no more than that the party leadership has more widespread support than a candidate not supported by the leadership. Cases invalidating ballot-access requirements have focused on the requirements themselves, and not on the manner in which political actors function under those requirements. *E. g.*, *Bullock* v. *Carter*, 405 U. S. 134. Those cases do not establish an individual's constitutional right to have a "fair shot" at winning a party's nomination. Pp. 204–207.

(d) Respondents' argument that the existence of entrenched "one-party rule" in the State's general election demands that the First Amendment be used to impose additional competition in the parties' nominee-selection process is a novel and implausible reading of the First Amendment. Pp. 207–209.

462 F. 3d 161, reversed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SOUTER, THOMAS, GINSBURG, BREYER, and ALITO, JJ., joined. STEVENS, J., filed a concurring opinion, in which SOUTER, J., joined, *post*, p. 209. KENNEDY, J., filed an opinion concurring in the judgment, in which BREYER, J., joined as to Part II, *post*, p. 209.

Theodore B. Olson argued the cause for petitioners New York State Board of Elections et al. With him on the briefs were *Matthew D. McGill*, *Michael S. Diamant*, *Todd D. Valentine*, *Randy M. Mastro*, and *Jennifer L. Conn*. *Andrew J. Rossman* argued the cause for petitioners New York County Democratic Committee et al. With him on the briefs were *Steven M. Pesner*, *James P. Chou*, *James E. d'Auguste*, *Vincenzo A. DeLeo*, *Edward P. Lazarus*, *Carter G. Phillips*, *Thomas C. Goldstein*, *Joseph L. Forstadt*, *Ernst H. Rosenberger*, *Burton N. Lipshie*, *David A. Sifre*, and *Arthur W. Greig*. *Andrew M. Cuomo*, Attorney General of New York, *Barbara D. Underwood*, Solicitor General, *Benjamin N. Gutman*, Deputy Solicitor General, and *Denise A. Hartman*, As-

sistant Solicitor General, filed briefs for petitioner the State of New York.

Frederick A. O. Schwarz, Jr., argued the cause for respondents. With him on the brief were *Burt Neuborne*, *Deborah Goldberg*, *Kent A. Yalowitz*, and *Paul M. Smith*.*

JUSTICE SCALIA delivered the opinion of the Court.

The State of New York requires that political parties select their nominees for Supreme Court Justice at a convention of delegates chosen by party members in a primary election. We consider whether this electoral system violates the First Amendment rights of prospective party candidates.

I

A

The Supreme Court of New York is the State's trial court of general jurisdiction, with an Appellate Division that hears appeals from certain lower courts. See N. Y. Const., Art.

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*Briefs of *amici curiae* urging reversal were filed for the Asian American Bar Association of New York by *Steven B. Shapiro* and *Vincent T. Chang*; for the Mid-Manhattan Branch of the NAACP et al. by *Gene C. Schaerr*, *Steffen N. Johnson*, *Linda T. Coberly*, and *Michael J. Friedman*; and for the Republican National Committee by *H. Christopher Bartolomucci*.

Briefs of *amici curiae* urging affirmance were filed for the City of New York et al. by *Preeta D. Bansal*, *Barry Kamins*, *Michael A. Cardozo*, *Victor A. Kovner*, and *Kathryn Grant Madigan*; for the American Civil Liberties Union et al. by *Arthur N. Eisenberg* and *Steven R. Shapiro*; for the Asian American Legal Defense and Education Fund et al. by *Mariann Meier Wang*; for the Cato Institute et al. by *Erik S. Jaffe*; for Guy-Uriel E. Charles et al. by *Ellen D. Katz*, *pro se*; for the New York County Lawyers' Association by *Stephanie G. Wheeler* and *Bradley P. Smith*; for the Washington Legal Foundation by *Daniel J. Popeo* and *Richard A. Samp*; for John Dunne by *Andrew H. Schapiro*; for Charles J. Hynes by *Paul A. Engelmayer*; for Edward I. Koch by *Mr. Koch*, *pro se*, and *Bruce S. Kaplan*; for Thomas Mann et al. by *Daniel R. Ortiz*, *J. Gerald Hebert*, and *Paul S. Ryan*; and for Former New York State Judges et al. by *Holly K. Kulka* and *Jonathan R. Dowell*.

VI, §§7, 8. Under New York's current Constitution, the State is divided into 12 judicial districts, see Art. VI, §6(a); N. Y. Jud. Law Ann. §140 (West 2005), and Supreme Court Justices are elected to 14-year terms in each such district, see N. Y. Const., Art. VI, §6(c). The New York Legislature has provided for the election of a total of 328 Supreme Court Justices in this fashion. See N. Y. Jud. Law Ann. §140–a (West Supp. 2007).

Over the years, New York has changed the method by which Supreme Court Justices are selected several times. Under the New York Constitution of 1821, Art. IV, §7, all judicial officers, except Justices of the Peace, were appointed by the Governor with the consent of the Senate. See 7 Sources and Documents of the U. S. Constitutions 181, 184–185 (W. Swindler ed. 1978). In 1846, New York amended its Constitution to require popular election of the Justices of the Supreme Court (and also the Judges of the New York Court of Appeals). *Id.*, at 192, 200 (N. Y. Const. of 1846, Art. VI, §12). In the early years under that regime, the State allowed political parties to choose their own method of selecting the judicial candidates who would bear their endorsements on the general-election ballot. See, *e. g.*, Report of Joint Committee of Senate and Assembly of New York, Appointed to Investigate Primary and Election Laws of This and Other States, S. Doc. No. 26, pp. 195–219 (1910). The major parties opted for party conventions, the same method then employed to nominate candidates for other state offices. *Ibid.*; see also P. Ray, An Introduction to Political Parties and Practical Politics 94 (1913).

In 1911, the New York Legislature enacted a law requiring political parties to select Supreme Court nominees (and most other nominees who did not run statewide) through direct primary elections. Act of Oct. 18, 1911, ch. 891, §45(4), 1911 N. Y. Laws pp. 2657, 2682. The primary system came to be criticized as a "device capable of astute and successful manipulation by professionals," Editorial, The State Conven-

tion, N. Y. Times, May 1, 1917, p. 12, and the Republican candidate for Governor in 1920 campaigned against it as "a fraud" that "'offered the opportunity for two things, for the demagogue and the man with money,'" Miller Declares Primary a Fraud, N. Y. Times, Oct. 23, 1920, p. 4. A law enacted in 1921 required parties to select their candidates for the Supreme Court by a convention composed of delegates elected by party members. Act of May 2, 1921, ch. 479, §§45(1), 110, 1921 N. Y. Laws pp. 1451, 1454, 1471.

New York retains this system of choosing party nominees for Supreme Court Justice to this day. Section 6–106 of New York's election law sets forth its basic operation: "Party nominations for the office of justice of the supreme court shall be made by the judicial district convention." N. Y. Elec. Law Ann. §6–106 (West 2007). A "party" is any political organization whose candidate for Governor received 50,000 or more votes in the most recent election. §1–104(3). In a September "delegate primary," party members elect delegates from each of New York's 150 assembly districts to attend the party's judicial convention for the judicial district in which the assembly district is located. See N. Y. State Law Ann. §121 (West 2003); N. Y. Elec. Law Ann. §§6–124, 8–100(1)(a) (West 2007). An individual may run for delegate by submitting to the Board of Elections a designating petition signed by 500 enrolled party members residing in the assembly district, or by five percent of such enrolled members, whichever is less. §§6–136(2)(i), (3). These signatures must be gathered within a 37-day period preceding the filing deadline, which is approximately two months before the delegate primary. §§6–134(4), 6–158(1). The delegates elected in these primaries are uncommitted; the primary ballot does not specify the judicial nominee whom they will support. §7–114.

The nominating conventions take place one to two weeks after the delegate primary. §§6–126, 6–158(5). Each of the 12 judicial districts has its own convention to nominate the

party's Supreme Court candidate or candidates who will run at large in that district in the general election. §§6–124, 6–156. The general election takes place in November. §8–100(1)(c). The nominees from the party conventions appear automatically on the general-election ballot. §7–104(5). They may be joined on the general-election ballot by independent candidates and candidates of political organizations that fail to meet the 50,000 vote threshold for "party" status; these candidates gain access to the ballot by submitting timely nominating petitions with (depending on the judicial district) 3,500 or 4,000 signatures from voters in that district or signatures from five percent of the number of votes cast for Governor in that district in the prior election, whichever is less. §§6–138, 6–142(2).

B

Respondent López Torres was elected in 1992 to the civil court for Kings County—a court with more limited jurisdiction than the Supreme Court—having gained the nomination of the Democratic Party through a primary election. She claims that soon after her election, party leaders began to demand that she make patronage hires, and that her consistent refusal to do so caused the local party to oppose her unsuccessful candidacy at the Supreme Court nominating conventions in 1997, 2002, and 2003. The following year, López Torres—together with other candidates who had failed to secure the nominations of their parties, voters who claimed to have supported those candidates, and the New York branch of a public-interest organization called Common Cause—brought suit in federal court against the New York Board of Elections, which is responsible for administering and enforcing the New York election law. See §§3–102, 3–104. They contended that New York's election law burdened the rights of challengers seeking to run against candidates favored by the party leadership, and deprived voters and candidates of their rights to gain access to the ballot and to associate in choosing their party's candidates. As rele-

vant here, they sought a declaration that New York's convention system for selecting Supreme Court Justices violates their First Amendment rights, and an injunction mandating the establishment of a direct primary election to select party nominees for Supreme Court Justice.

The District Court issued a preliminary injunction granting the relief requested, pending the New York Legislature's enactment of a new statutory scheme. 411 F. Supp. 2d 212, 256 (EDNY 2006). A unanimous panel of the United States Court of Appeals for the Second Circuit affirmed. 462 F. 3d 161 (2006). It held that voters and candidates possess a First Amendment right to a "realistic opportunity to participate in [a political party's] nominating process, and to do so free from burdens that are both severe and unnecessary." *Id.*, at 187. New York's electoral law violated that right because of the quantity of signatures and delegate recruits required to obtain a Supreme Court nomination at a judicial convention, see *id.*, at 197, and because of the apparent reality that party leaders can control delegates, see *id.*, at 198–200. In the court's view, because "one-party rule" prevailed within New York's judicial districts, a candidate had a constitutional right to gain access to the party's convention, notwithstanding her ability to get on the general-election ballot by petition signatures. *Id.*, at 193–195, 200. The Second Circuit's holding effectively returned New York to the system of electing Supreme Court Justices that existed before the 1921 amendments to the election law. We granted certiorari. 549 U. S. 1204 (2007).

II

A

A political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform. *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U. S. 107,

122 (1981); *California Democratic Party* v. *Jones*, 530 U. S. 567, 574–575 (2000). These rights are circumscribed, however, when the State gives the party a role in the election process—as New York has done here by giving certain parties the right to have their candidates appear with party endorsement on the general-election ballot. Then, for example, the party's racially discriminatory action may become state action that violates the Fifteenth Amendment. See *id.*, at 573. And then also the State acquires a legitimate governmental interest in ensuring the fairness of the party's nominating process, enabling it to prescribe what that process must be. *Id.*, at 572–573. We have, for example, considered it to be "too plain for argument" that a State may prescribe party use of primaries or conventions to select nominees who appear on the general-election ballot. *American Party of Tex.* v. *White*, 415 U. S. 767, 781 (1974). That prescriptive power is not without limits. In *Jones*, for example, we invalidated on First Amendment grounds California's blanket primary, reasoning that it permitted nonparty-members to determine the candidate bearing the party's standard in the general election. 530 U. S., at 577. See also *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 224 (1989); *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 214–217 (1986).

In the present case, however, the party's associational rights are at issue (if at all) only as a shield and not as a sword. Respondents are in no position to rely on the right that the First Amendment confers on political parties to structure their internal party processes and to select the candidate of the party's choosing. Indeed, both the Republican and Democratic state parties have intervened from the very early stages of this litigation to defend New York's electoral law. The weapon wielded by these plaintiffs is their *own* claimed associational right not only to join, but to have a certain degree of influence in, the party. They contend that New York's electoral system does not go far enough—

does not go as far as the Constitution demands—in ensuring that they will have a fair chance of prevailing in their parties' candidate-selection process.

This contention finds no support in our precedents. We have indeed acknowledged an individual's associational right to vote in a party primary without undue state-imposed impediment. In *Kusper* v. *Pontikes*, 414 U. S. 51, 57 (1973), we invalidated an Illinois law that required a voter wishing to change his party registration so as to vote in the primary of a different party to do so almost two full years before the primary date. But *Kusper* does not cast doubt on all state-imposed limitations upon primary voting. In *Rosario* v. *Rockefeller*, 410 U. S. 752 (1973), we upheld a New York State requirement that a voter have enrolled in the party of his choice at least 30 days before the previous general election in order to vote in the next party primary. In any event, respondents do not claim that they have been excluded from voting in the primary. Moreover, even if we extended *Kusper* to cover not only the right to vote in the party primary but also the right to run, the requirements of the New York law (a 500-signature petition collected during a 37-day window in advance of the primary) are entirely reasonable. Just as States may require persons to demonstrate "a significant modicum of support" before allowing them access to the general-election ballot, lest it become unmanageable, *Jenness* v. *Fortson*, 403 U. S. 431, 442 (1971), they may similarly demand a minimum degree of support for candidate access to a primary ballot. The signature requirement here is far from excessive. See, *e. g.*, *Norman* v. *Reed*, 502 U. S. 279, 295 (1992) (approving requirement of 25,000 signatures, or approximately two percent of the electorate); *White*, *supra*, at 783 (approving requirement of one percent of the vote cast for Governor in the preceding general election, which was about 22,000 signatures).

Respondents' real complaint is not that they cannot vote in the election for delegates, nor even that they cannot run

in that election, but that the convention process that follows the delegate election does not give them a realistic chance to secure the party's nomination. The party leadership, they say, inevitably garners more votes for its slate of delegates (delegates uncommitted to any judicial nominee) than the unsupported candidate can amass for himself. And thus the leadership effectively determines the nominees. But this says nothing more than that the party leadership has more widespread support than a candidate not supported by the leadership. No New York law compels election of the leadership's slate—or, for that matter, compels the delegates elected on the leadership's slate to vote the way the leadership desires. And no state law prohibits an unsupported candidate from attending the convention and seeking to persuade the delegates to support her. Our cases invalidating ballot-access requirements have focused on the requirements themselves, and not on the manner in which political actors function under those requirements. See, *e. g.*, *Bullock* v. *Carter*, 405 U. S. 134 (1972) (Texas statute required exorbitant filing fees); *Williams* v. *Rhodes*, 393 U. S. 23 (1968) (Ohio statute required, *inter alia*, excessive number of petition signatures); *Anderson* v. *Celebrezze*, 460 U. S. 780 (1983) (Ohio statute established unreasonably early filing deadline). Here respondents complain not of the state law, but of the voters' (and their elected delegates') preference for the choices of the party leadership.

To be sure, we have, as described above, permitted States to set their faces against "party bosses" by requiring party-candidate selection through processes more favorable to insurgents, such as primaries. But to say that the State can require this is a far cry from saying that the Constitution demands it. None of our cases establishes an individual's constitutional right to have a "fair shot" at winning the party's nomination. And with good reason. What constitutes a "fair shot" is a reasonable enough question for legislative judgment, which we will accept so long as it does not too

much infringe upon the party's associational rights. But it is hardly a manageable constitutional question for judges—especially for judges in our legal system, where traditional electoral practice gives no hint of even the existence, much less the content, of a constitutional requirement for a "fair shot" at party nomination. Party conventions, with their attendant "smoke-filled rooms" and domination by party leaders, have long been an accepted manner of selecting party candidates. "National party conventions prior to 1972 were generally under the control of state party leaders" who determined the votes of state delegates. American Presidential Elections: Process, Policy, and Political Change 14 (H. Schantz ed. 1996). Selection by convention has never been thought unconstitutional, even when the delegates were not selected by primary but by party caucuses. See *ibid.*

The Second Circuit's judgment finesses the difficulty of saying how much of a shot is a "fair shot" by simply mandating a primary until the New York Legislature acts. This was, according to the Second Circuit, the New York election law's default manner of party-candidate selection for offices whose manner of selection is not otherwise prescribed. Petitioners question the propriety of this mandate, but we need not pass upon that here. Even conceding its propriety, there is good reason to believe that the elected members of the New York Legislature remain opposed to the primary, for the same reasons their predecessors abolished it 86 years ago: because it leaves judicial selection to voters uninformed about judicial qualifications, and places a high premium upon the ability to raise money. Should the New York Legislature persist in that view, and adopt something different from a primary and closer to the system that the Second Circuit invalidated, the question whether *that* provides enough of a "fair shot" would be presented. We are not inclined to open up this new and excitingly unpredictable theater of election jurisprudence. Selection by convention has been a traditional means of choosing party nominees. While a State

may determine it is not desirable and replace it, it is not unconstitutional.

B

Respondents put forward, as a special factor which gives them a First Amendment right to revision of party processes in the present case, the assertion that party loyalty in New York's judicial districts renders the general-election ballot "uncompetitive." They argue that the existence of entrenched "one-party rule" demands that the First Amendment be used to impose additional competition in the nominee-selection process of the parties. (The asserted "one-party rule," we may observe, is that of the Democrats in some judicial districts, and of the Republicans in others. See 411 F. Supp. 2d, at 230.) This is a novel and implausible reading of the First Amendment.

To begin with, it is hard to understand how the competitiveness of the general election has anything to do with respondents' associational rights in the party's selection process. It makes no difference to the person who associates with a party and seeks its nomination whether the party is a contender in the general election, an underdog, or the favorite. Competitiveness may be of interest to the voters in the general election, and to the candidates who choose to run *against* the dominant party. But we have held that those interests are well enough protected so long as all candidates have an adequate opportunity to appear on the general-election ballot. In *Jenness* we upheld a petition-signature requirement for inclusion on the general-election ballot of five percent of the eligible voters, see 403 U. S., at 442, and in *Munro* v. *Socialist Workers Party*, 479 U. S. 189, 199 (1986), we upheld a petition-signature requirement of one percent of the vote in the State's primary. New York's general-election balloting procedures for Supreme Court Justice easily pass muster under this standard. Candidates who fail to obtain a major party's nomination via convention can still get on the general-election ballot for the judicial

district by providing the requisite number of signatures of voters resident in the district. N. Y. Elec. Law Ann. §6–142(2). To our knowledge, outside of the Fourteenth and Fifteenth Amendment contexts, see *Jones*, 530 U. S., at 573, no court has ever made "one-party entrenchment" a basis for interfering with the candidate-selection processes of a party. (Of course, the *lack* of one-party entrenchment will not cause free access to the general-election ballot to validate an otherwise unconstitutional restriction upon participation in a party's nominating process. See *Bullock*, 405 U. S., at 146–147.)

The reason one-party rule is entrenched may be (and usually is) that voters approve of the positions and candidates that the party regularly puts forward. It is no function of the First Amendment to require revision of those positions or candidates. The States can, within limits (that is, short of violating the parties' freedom of association), discourage party monopoly—for example, by refusing to show party endorsement on the election ballot. But the Constitution provides no authority for federal courts to prescribe such a course. The First Amendment creates an open marketplace where ideas, most especially political ideas, may compete without government interference. See *Abrams* v. *United States*, 250 U. S. 616, 630 (1919) (Holmes, J., dissenting). It does not call on the federal courts to manage the market by preventing too many buyers from settling upon a single product.

Limiting respondents' court-mandated "fair shot at party endorsement" to situations of one-party entrenchment merely multiplies the impracticable lines courts would be called upon to draw. It would add to those alluded to earlier the line at which mere party popularity turns into "one-party dominance." In the case of New York's election system for Supreme Court Justices, that line would have to be drawn separately for each of the 12 judicial districts—and in those districts that are "competitive" the current system

would presumably remain valid. But why limit the remedy to *one*-party dominance? Does not the dominance of two parties similarly stifle competing opinions? Once again, we decline to enter the morass.

* * *

New York State has thrice (in 1846, 1911, and 1921) displayed a willingness to reconsider its method of selecting Supreme Court Justices. If it wishes to return to the primary system that it discarded in 1921, it is free to do so; but the First Amendment does not compel that. We reverse the Second Circuit's contrary judgment.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE SOUTER joins, concurring.

While I join JUSTICE SCALIA's cogent resolution of the constitutional issues raised by this case, I think it appropriate to emphasize the distinction between constitutionality and wise policy. Our holding with respect to the former should not be misread as endorsement of the electoral system under review, or disagreement with the findings of the District Court that describe glaring deficiencies in that system and even lend support to the broader proposition that the very practice of electing judges is unwise. But as I recall my esteemed former colleague, Thurgood Marshall, remarking on numerous occasions: "The Constitution does not prohibit legislatures from enacting stupid laws."

JUSTICE KENNEDY, with whom JUSTICE BREYER joins as to Part II, concurring in the judgment.

The Court's analysis, in my view, is correct in important respects; but my own understanding of the controlling principles counsels concurrence in the judgment and the expression of these additional observations.

I

When a state-mandated primary is used to select delegates to conventions or nominees for office, the State is bound not to design its ballot or election processes in ways that impose severe burdens on First Amendment rights of expression and political participation. See *Kusper* v. *Pontikes*, 414 U. S. 51, 57–58 (1973); see also *California Democratic Party* v. *Jones*, 530 U. S. 567, 581–582 (2000); cf. *Lubin* v. *Panish*, 415 U. S. 709, 716 (1974); *Bullock* v. *Carter*, 405 U. S. 134, 144 (1972); *Gray* v. *Sanders*, 372 U. S. 368, 380 (1963). Respondents' objection to New York's scheme of nomination by convention is that it is difficult for those who lack party connections or party backing to be chosen as a delegate or to become a nominee for office. Were the state-mandated-and-designed nominating convention the sole means to attain access to the general election ballot there would be considerable force, in my view, to respondents' contention that the First Amendment prohibits the State from requiring a delegate selection mechanism with the rigidities and difficulties attendant upon this one. The system then would be subject to scrutiny from the standpoint of a "reasonably diligent independent candidate," *Storer* v. *Brown*, 415 U. S. 724, 742 (1974). The Second Circuit took this approach. 462 F. 3d 161, 196 (2006).

As the Court is careful to note, however, New York has a second mechanism for placement on the final election ballot. *Ante*, at 201. One who seeks to be a justice of the New York Supreme Court may qualify by a petition process. The petition must be signed by the lesser of (1) 5 percent of the number of votes last cast for Governor in the judicial district or (2) either 3,500 or 4,000 voters (depending on the district). This requirement has not been shown to be an unreasonable one, a point respondents appear to concede. True, the candidate who gains ballot access by petition does not have a party designation; but the candidate is still considered by the voters.

The petition alternative changes the analysis. Cf. *Munro* v. *Socialist Workers Party*, 479 U. S. 189, 199 (1986) ("It can hardly be said that Washington's voters are denied freedom of association because they must channel their expressive activity into a campaign at the primary as opposed to the general election").

This is not to say an alternative route to the general election exempts the delegate primary/nominating convention from all scrutiny. For instance, the Court in *Bullock*, after determining that Texas' primary election filing fees were so "patently exclusionary" on the basis of wealth as to invoke strict scrutiny under the Equal Protection Clause, rejected the argument that candidate access to the general election without a fee saved the statute. 405 U. S., at 143–144, 146–147 ("[W]e can hardly accept as reasonable an alternative that requires candidates and voters to abandon their party affiliations in order to avoid the burdens of the filing fees"). But there is a dynamic relationship between, in this case, the convention system and the petition process; higher burdens at one stage are mitigated by lower burdens at the other. See *Burdick* v. *Takushi*, 504 U. S. 428, 448 (1992) (KENNEDY, J., dissenting) ("The liberality of a State's ballot access laws is one determinant of the extent of the burden imposed by the write-in ban; it is not, though, an automatic excuse for forbidding all write-in voting"); Persily, Candidates v. Parties: Constitutional Constraints on Primary Ballot Access Laws, 89 Geo. L. J. 2181, 2214–2216 (2001). And, though the point does not apply here, there are certain injuries (as in *Bullock*) that are so severe they are unconstitutional no matter how minor the burdens at the other stage. As the Court recognized in *Kusper*, moreover, there is an individual right to associate with the political party of one's choice and to have a voice in the selection of that party's candidate for public office. See 414 U. S., at 58. On the particular facts and circumstances of this case, then, I reach the same conclusion the Court does.

II

It is understandable that the Court refrains from commenting upon the use of elections to select the judges of the State's courts of general jurisdiction, for New York has the authority to make that decision. This closing observation, however, seems to be in order.

When one considers that elections require candidates to conduct campaigns and to raise funds in a system designed to allow for competition among interest groups and political parties, the persisting question is whether that process is consistent with the perception and the reality of judicial independence and judicial excellence. The rule of law, which is a foundation of freedom, presupposes a functioning judiciary respected for its independence, its professional attainments, and the absolute probity of its judges. And it may seem difficult to reconcile these aspirations with elections.

Still, though the Framers did not provide for elections of federal judges, most States have made the opposite choice, at least to some extent. In light of this longstanding practice and tradition in the States, the appropriate practical response is not to reject judicial elections outright but to find ways to use elections to select judges with the highest qualifications. A judicial election system presents the opportunity, indeed the civic obligation, for voters and the community as a whole to become engaged in the legal process. Judicial elections, if fair and open, could be an essential forum for society to discuss and define the attributes of judicial excellence and to find ways to discern those qualities in the candidates. The organized bar, the legal academy, public advocacy groups, a principled press, and all the other components of functioning democracy must engage in this process.

Even in flawed election systems there emerge brave and honorable judges who exemplify the law's ideals. But it is unfair to them and to the concept of judicial independence if

the State is indifferent to a selection process open to manipulation, criticism, and serious abuse.

Rule of law is secured only by the principled exercise of political will. If New York statutes for nominating and electing judges do not produce both the perception and the reality of a system committed to the highest ideals of the law, they ought to be changed and to be changed now. But, as the Court today holds, and for further reasons given in this separate opinion, the present suit does not permit us to invoke the Constitution in order to intervene.

III

With these observations, I concur in the judgment of the Court.

Syllabus

ALI *v.* FEDERAL BUREAU OF PRISONS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 06–9130. Argued October 29, 2007—Decided January 22, 2008

The Federal Tort Claims Act (FTCA) waives the United States' sovereign immunity for claims arising out of torts committed by federal employees, see 28 U. S. C. § 1346(b)(1), but, as relevant here, exempts from that waiver "[a]ny claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any . . . property by any officer of customs or excise or any other law enforcement officer," § 2680(c). Upon his transfer from an Atlanta federal prison to one in Kentucky, petitioner noticed that several items were missing from his personal property, which had been shipped to the new facility by the Federal Bureau of Prisons (BOP). Alleging that BOP officers had lost his property, petitioner filed this suit under, *inter alia*, the FTCA, but the District Court dismissed that claim as barred by § 2680(c). Affirming, the Eleventh Circuit rejected petitioner's argument that the statutory phrase "any officer of customs or excise or any other law enforcement officer" applies only to officers enforcing customs or excise laws.

Held: Section 2680(c)'s text and structure demonstrate that the broad phrase "any other law enforcement officer" covers all law enforcement officers. Petitioner's argument that § 2680(c) is focused on preserving sovereign immunity only for officers enforcing customs and excise laws is inconsistent with the statute's language. "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States* v. *Gonzales*, 520 U. S. 1, 5. For example, in considering a provision imposing an additional sentence that was not to run concurrently with "any other term of imprisonment," 18 U. S. C. § 924(c)(1), the *Gonzales* Court held that, notwithstanding the subsection's initial reference to federal drug trafficking crimes, the expansive word "any" and the absence of restrictive language left "no basis in the text for limiting" the phrase "any other term of imprisonment" to federal sentences. 520 U. S., at 5. To similar effect, see *Harrison* v. *PPG Industries, Inc.*, 446 U. S. 578, 588–589, in which the Court held that there was "no indication whatever that Congress intended" to limit the "expansive language" "'any other final action'" to particular kinds of agency action. The reasoning of *Gonzales* and *Harrison* applies equally to 28 U. S. C. § 2680(c): Congress' use of "any" to modify "other law enforcement officer" is most naturally read to mean law enforcement officers of whatever kind. To be sure, the text's refer-

ences to "tax or customs duty" and "officer[s] of customs or excise" indicate an intent to preserve immunity for claims arising from an officer's enforcement of tax and customs laws. The text also indicates, however, that Congress intended to preserve immunity for claims arising from the detention of property, and there is no indication of any intent that immunity for those claims turns on the type of law being enforced. Recent amendments to §2680(c) restoring the sovereign immunity waiver for officers enforcing *any* federal forfeiture law, see §2680(c)(1), support the Court's conclusion by demonstrating Congress' view that, prior to the amendments, §2680(c) covered *all* law enforcement officers. Against this textual and structural evidence, petitioner's reliance on the canons of statutory construction *ejusdem generis* and *noscitur a sociis* and on the rule against superfluities is unconvincing. The Court is unpersuaded by petitioner's attempt to create ambiguity where the statute's structure and text suggest none. Had Congress intended to limit §2680(c)'s reach as petitioner contends, it easily could have written "any other law enforcement officer *acting in a customs or excise capacity*." Instead, it used the unmodified, all-encompassing phrase "any other law enforcement officer." This Court must give effect to the text Congress enacted. Pp. 217–228.

204 Fed. Appx. 778, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, GINSBURG, and ALITO, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which STEVENS, SOUTER, and BREYER, JJ., joined, *post*, p. 228. BREYER, J., filed a dissenting opinion, in which STEVENS, J., joined, *post*, p. 243.

Jean-Claude André, by appointment of the Court, 551 U. S. 1186, argued the cause for petitioner. With him on the briefs were *Michael G. Smith*, *Peter K. Stris*, *Shaun P. Martin*, and *Brendan Maher*.

Kannon K. Shanmugam argued the cause for respondents. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Kneedler*, and *Mark B. Stern*.

JUSTICE THOMAS delivered the opinion of the Court.

This case concerns the scope of 28 U. S. C. §2680, which carves out certain exceptions to the United States' waiver of sovereign immunity for torts committed by federal employees. Section 2680(c) provides that the waiver of sovereign

immunity does not apply to claims arising from the detention of property by "any officer of customs or excise or any other law enforcement officer." Petitioner contends that this clause applies only to law enforcement officers enforcing customs or excise laws, and thus does not affect the waiver of sovereign immunity for his property claim against officers of the Federal Bureau of Prisons (BOP). We conclude that the broad phrase "any other law enforcement officer" covers all law enforcement officers. Accordingly, we affirm the judgment of the Court of Appeals upholding the dismissal of petitioner's claim.

I

Petitioner Abdus-Shahid M. S. Ali was a federal prisoner at the United States Penitentiary in Atlanta, Georgia, from 2001 to 2003. In December 2003, petitioner was scheduled to be transferred to the United States Penitentiary Big Sandy (USP Big Sandy) in Inez, Kentucky. Before being transferred, he left two duffle bags containing his personal property in the Atlanta prison's Receiving and Discharge Unit to be inventoried, packaged, and shipped to USP Big Sandy. Petitioner was transferred, and his bags arrived some days later. Upon inspecting his property, he noticed that several items were missing. The staff at USP Big Sandy's Receiving and Discharge Unit told him that he had been given everything that was sent, and that if things were missing he could file a claim. Many of the purportedly missing items were of religious and nostalgic significance, including two copies of the Qur'an, a prayer rug, and religious magazines. Petitioner estimated that the items were worth $177.

Petitioner filed an administrative tort claim. In denying relief, the agency noted that, by his signature on the receipt form, petitioner had certified the accuracy of the inventory listed thereon and had thereby relinquished any future claims relating to missing or damaged property. Petitioner then filed a complaint alleging, *inter alia*, violations of the

Federal Tort Claims Act (FTCA), 28 U. S. C. §§ 1346, 2671 *et seq.* The BOP maintained that petitioner's claim was barred by the exception in § 2680(c) for property claims against law enforcement officers. The District Court agreed and dismissed petitioner's FTCA claim for lack of subject-matter jurisdiction. Petitioner appealed.

The Eleventh Circuit affirmed, agreeing with the District Court's interpretation of § 2680(c). 204 Fed. Appx. 778, 779–780 (2006) *(per curiam)*. In rejecting petitioner's arguments, the Court of Appeals relied on this Court's broad interpretation of § 2680(c)'s "detention" clause in *Kosak* v. *United States*, 465 U. S. 848, 854–859 (1984), on decisions by other Courts of Appeals, and on its own decision in *Schlaebitz* v. *United States Dept. of Justice*, 924 F. 2d 193, 195 (1991) *(per curiam)* (holding that United States Marshals, who were allegedly negligent in releasing a parolee's luggage to a third party, were "law enforcement officers" under § 2680(c)). See 204 Fed. Appx., at 779–780.

We granted certiorari, 550 U. S. 968 (2007), to resolve the disagreement among the Courts of Appeals as to the scope of § 2680(c).[1]

II

In the FTCA, Congress waived the United States' sovereign immunity for claims arising out of torts committed

[1] The Eleventh Circuit joined five other Courts of Appeals in construing § 2680(c) to encompass all law enforcement officers. See *Bramwell* v. *Bureau of Prisons*, 348 F. 3d 804, 806–807 (CA9 2003); *Chapa* v. *United States Dept. of Justice*, 339 F. 3d 388, 390 (CA5 2003) *(per curiam)*; *Hatten* v. *White*, 275 F. 3d 1208, 1210 (CA10 2002); *Cheney* v. *United States*, 972 F. 2d 247, 248 (CA8 1992) *(per curiam)*; *Ysasi* v. *Rivkind*, 856 F. 2d 1520, 1525 (CA Fed. 1988). Five other Courts of Appeals reached the contrary conclusion, interpreting the clause as limited to officers performing customs or excise functions. See *ABC* v. *DEF*, 500 F. 3d 103, 107 (CA2 2007); *Dahler* v. *United States*, 473 F. 3d 769, 771–772 (CA7 2007) *(per curiam)*; *Andrews* v. *United States*, 441 F. 3d 220, 227 (CA4 2006); *Bozuyge* v. *United States*, 83 F. 3d 482, 486 (CADC 1996); *Kurinsky* v. *United States*, 33 F. 3d 594, 598 (CA6 1994).

by federal employees. See 28 U. S. C. §1346(b)(1). As relevant here, the FTCA authorizes "claims against the United States, for money damages . . . for injury or loss of property . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." *Ibid.* The FTCA exempts from this waiver certain categories of claims. See §§2680(a)–(n). Relevant here is the exception in subsection (c), which provides that §1346(b) shall not apply to "[a]ny claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer." §2680(c).

This case turns on whether the BOP officers who allegedly lost petitioner's property qualify as "other law enforcement officer[s]" within the meaning of §2680(c).[2] Petitioner argues that they do not because "any other law enforcement officer" includes only law enforcement officers acting in a customs or excise capacity. Noting that Congress referenced customs and excise activities in both the language at issue and the preceding clause in §2680(c), petitioner argues that the entire subsection is focused on preserving the United States' sovereign immunity only as to officers enforcing those laws.

Petitioner's argument is inconsistent with the statute's language.[3] The phrase "*any* other law enforcement officer"

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[2] We assume, without deciding, that the BOP officers "detained" Ali's property and thus satisfy §2680(c)'s "arising in respect of . . . detention" requirement. The Court of Appeals held that the "detention" clause was satisfied, and petitioner expressly declined to raise the issue on certiorari. See 204 Fed. Appx. 778, 779–780 (CA11 2006) *(per curiam)*; Brief for Petitioner 10–11, n. 9.

[3] We consider this question for the first time in this case. Petitioner argues that this Court concluded in *Kosak* v. *United States*, 465 U. S. 848 (1984), that the phrase "any other law enforcement officer" is ambiguous. Reply Brief for Petitioner 4. In that case, the Court construed a portion

suggests a broad meaning. *Ibid.* (emphasis added). We have previously noted that "[r]ead naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States* v. *Gonzales*, 520 U. S. 1, 5 (1997) (quoting Webster's Third New International Dictionary 97 (1976)). In *Gonzales*, we considered a provision that imposed an additional sentence for firearms used in federal drug trafficking crimes and provided that such additional sentence shall not be concurrent with "'any other term of imprisonment.'" 520 U. S., at 4 (quoting 18 U. S. C. §924(c)(1) (1994 ed.); emphasis deleted). Notwithstanding the subsection's initial reference to federal drug trafficking crimes, we held that the expansive word "any" and the absence of restrictive language left "no basis in the text for limiting" the phrase "any other term of imprisonment" to federal sentences. 520 U. S., at 5. Similarly, in *Harrison* v. *PPG Industries, Inc.*, 446 U. S. 578 (1980), the Court considered the phrase "any other final action" in amendments to the Clean Air Act. The Court explained that the amendments expanded a list of Environmental Protection Agency Administrator actions by adding two categories of actions: actions under a specifically enumerated statutory provision, and "any other final action" under the Clean Air Act. *Id.*, at 584 (emphasis deleted). Focusing on Congress' choice of the word "any," the Court "discern[ed] no uncertainty in the meaning of the phrase, 'any other final action,'" and emphasized that the statute's "expansive language offer[ed] no indi-

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of the same clause at issue here, but the decision had no bearing on the meaning of "any other law enforcement officer." 465 U. S., at 853–862 (holding that "detention" encompasses claims resulting from negligent handling or storage). Indeed, the Court expressly declined to reach the issue. *Id.*, at 852, n. 6 ("We have no occasion in this case to decide what kinds of 'law-enforcement officer[s],' other than customs officials, are covered by the exception" (alteration in original)). Petitioner's reliance on the footnote as concluding that the phrase is ambiguous reads too much into the Court's reservation of a question that was not then before it.

cation whatever that Congress intended" to limit the phrase to final actions similar to those in the specifically enumerated sections. *Id.*, at 588–589.

We think the reasoning of *Gonzales* and *Harrison* applies equally to the expansive language Congress employed in 28 U. S. C. §2680(c). Congress' use of "any" to modify "other law enforcement officer" is most naturally read to mean law enforcement officers of whatever kind.[4] The word "any" is repeated four times in the relevant portion of §2680(c), and two of those instances appear in the particular phrase at issue: "*any* officer of customs or excise or *any* other law enforcement officer." (Emphasis added.) Congress inserted the word "any" immediately before "other law enforcement officer," leaving no doubt that it modifies that phrase. To be sure, the text's references to "tax or customs duty" and "officer[s] of customs or excise" indicate that Congress intended to preserve immunity for claims arising from an officer's enforcement of tax and customs laws. The text also indicates, however, that Congress intended to preserve immunity for claims arising from the detention of property, and

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[4]Of course, other circumstances may counteract the effect of expansive modifiers. For example, we have construed an "any" phrase narrowly when it included a term of art that compelled that result. See *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 115–116 (2001) (construing "any other class of workers engaged in . . . commerce," 9 U. S. C. §1, narrowly based on the Court's previous interpretation of "in commerce" as a term of art with a narrower meaning). We also have construed such phrases narrowly when another term in the provision made sense only under a narrow reading, see *United States* v. *Alvarez-Sanchez*, 511 U. S. 350, 357–358 (1994) (limiting "any law-enforcement officer" to federal officers because the statute's reference to "delay" made sense only with respect to federal officers), and when a broad reading would have implicated sovereignty concerns, see *Raygor* v. *Regents of Univ. of Minn.*, 534 U. S. 533, 541–542 (2002) (applying the "clear statement rule" applicable to waivers of sovereign immunity to construe the phrase "all civil actions" to exclude a category of claims, "even though nothing in the statute expressly exclude[d]" them). None of the circumstances that motivated our decisions in these cases is present here.

there is no indication that Congress intended immunity for those claims to turn on the type of law being enforced.

Petitioner would require Congress to clarify its intent to cover all law enforcement officers by adding phrases such as "performing any official law enforcement function," or "without limitation." But Congress could not have chosen a more all-encompassing phrase than "any other law enforcement officer" to express that intent. We have no reason to demand that Congress write less economically and more repetitiously.

Recent amendments to §2680(c) support the conclusion that "any other law enforcement officer" is not limited to officers acting in a customs or excise capacity. In the Civil Asset Forfeiture Reform Act of 2000, Congress added subsections (c)(1)–(c)(4) to 28 U. S. C. §2680. §3(a), 114 Stat. 211. As amended, §2680(c) provides that the §1346(b) waiver of sovereign immunity, notwithstanding the exception at issue in this case, applies to:

> "[A]ny claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if—
>
> "(1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;
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> "(2) the interest of the claimant was not forfeited;
>
> "(3) the interest of the claimant was not remitted or mitigated (if the property was subject to forfeiture); and
>
> "(4) the claimant was not convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law."

The amendment does not govern petitioner's claim because his property was not "seized for the purpose of forfeiture,"

as required by paragraph (1). Nonetheless, the amendment is relevant because our construction of "any other law enforcement officer" must, to the extent possible, ensure that the statutory scheme is coherent and consistent. See *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 340 (1997) (citing *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 240 (1989)). The amendment canceled the exception—and thus restored the waiver of sovereign immunity—for certain seizures of property based on *any* federal forfeiture law. See 28 U. S. C. §2680(c)(1) (excepting property claims if "the property was seized for the purpose of forfeiture under *any provision of Federal law* providing for the forfeiture of property" (emphasis added)).

Under petitioner's interpretation, only law enforcement officers enforcing customs or excise laws were immune under the prior version of §2680(c). Thus, on petitioner's reading, the amendment's only effect was to restore the waiver for cases in which customs or excise officers, or officers acting in such a capacity, enforce forfeiture laws. This strikes us as an implausible interpretation of the statute. If that were Congress' intent, it is not apparent why Congress would have restored the waiver with respect to the enforcement of *all* civil forfeiture laws instead of simply those related to customs or excise. Petitioner's interpretation makes sense only if we assume that Congress went out of its way to restore the waiver for cases in which customs or excise officers, or officers acting in such a capacity, enforce forfeiture laws unrelated to customs or excise. But petitioner fails to demonstrate that customs or excise officers, or officers acting in such a capacity, ever enforce civil forfeiture laws unrelated to customs or excise, much less that they do so with such frequency that Congress is likely to have singled them out in the amendment.[5] It seems far more likely that Congress

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[5]JUSTICE KENNEDY's dissent (hereinafter the dissent) argues that, during border searches, customs and excise officers "routinely" enforce civil

restored the waiver for officers enforcing *any* civil forfeiture law because, in its view, *all* such officers were covered by the exception to the waiver prior to the amendment.

Against this textual and structural evidence that "any other law enforcement officer" does in fact mean any other law enforcement officer, petitioner invokes numerous canons of statutory construction. He relies primarily on *ejusdem generis*, or the principle that "when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration." *Norfolk & Western R. Co.* v. *Train Dispatchers*, 499 U. S. 117, 129 (1991). In petitioner's view, "any officer of customs or excise or any other law enforcement officer" should be read as a three-item list, and the final, catchall

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forfeiture laws unrelated to customs or excise. *Post*, at 239–240. But the examples the dissent provides do not support that assertion. The dissent maintains that a customs officer who seizes material defined as contraband under 49 U. S. C. §80302 *et seq.* is one such example. *Post*, at 240. But a customs officer's authority to effect a forfeiture of such contraband derives from a specific customs law. See 19 U. S. C. §1595a(c)(1)(C). Similarly, the dissent suggests that a Drug Enforcement Administration (DEA) agent "assisting a customs official" in a border search who seizes drug-related contraband under 21 U. S. C. §881 is acting in a "traditional revenue capacity." *Post*, at 240. But that argument is based on the assumption that an officer who assists in conducting a border search acts in a customs capacity even if he is not a customs officer and is not enforcing a customs law. That assumption, far from self-evident, only underscores the difficulty that would attend any attempt to define the contours of the implied limitation on §2680(c)'s reach proposed by petitioner and embraced by the dissent. "Acting in a customs or excise capacity" is not a self-defining concept, and not having included such a limitation in the statute's language, Congress of course did not provide a definition. Finally, the dissent points out that a customs or excise officer might effect a forfeiture of currency or monetary instruments under 31 U. S. C. §5317(c). *Post*, at 240. But §5317(c) is hardly a civil forfeiture law unrelated to customs or excise. See §5317(c)(2) (2000 ed., Supp. V) (authorizing forfeiture of property involved in a violation of, *inter alia*, §5316 (2000 ed.), which sets forth reporting requirements for exporting and importing monetary instruments).

phrase "any other law enforcement officer" should be limited to officers of the same nature as the preceding specific phrases.

Petitioner likens his case to two recent cases in which we found the canon useful. In *Washington State Dept. of Social and Health Servs.* v. *Guardianship Estate of Keffeler*, 537 U. S. 371, 375 (2003), we considered the clause "execution, levy, attachment, garnishment, or other legal process" in 42 U. S. C. § 407(a). Applying *ejusdem generis*, we concluded that "other legal process" was limited to legal processes of the same nature as the specific items listed. 537 U. S., at 384–385. The department's scheme for serving as a representative payee of the benefits due to children under its care, while a "legal process," did not share the common attribute of the listed items, viz., "utilization of some judicial or quasi-judicial mechanism . . . by which control over property passes from one person to another in order to discharge" a debt. *Id.*, at 385. Similarly, in *Dolan* v. *Postal Service*, 546 U. S. 481 (2006), the Court considered whether an exception to the FTCA's waiver of sovereign immunity for claims arising out of the "'loss, miscarriage, or negligent transmission of letters or postal matter'" barred a claim that mail negligently left on the petitioner's porch caused her to slip and fall. *Id.*, at 485 (quoting 28 U. S. C. § 2680(b)). Noting that "loss" and "miscarriage" both addressed "failings in the postal obligation to deliver mail in a timely manner to the right address," 546 U. S., at 487, the Court concluded that "negligent transmission" must be similarly limited, *id.*, at 486–489, and rejected the Government's argument that the exception applied to "all torts committed in the course of mail delivery," *id.*, at 490.

Petitioner asserts that § 2680(c), like the clauses at issue in *Keffeler* and *Dolan*, "'presents a textbook *ejusdem generis* scenario.'" Brief for Petitioner 15 (quoting *Andrews* v. *United States*, 441 F. 3d 220, 224 (CA4 2006)). We disagree.

The structure of the phrase "any officer of customs or excise or any other law enforcement officer" does not lend itself to application of the canon. The phrase is disjunctive, with one specific and one general category, not—like the clauses at issue in *Keffeler* and *Dolan*—a list of specific items separated by commas and followed by a general or collective term. The absence of a list of specific items undercuts the inference embodied in *ejusdem generis* that Congress remained focused on the common attribute when it used the catchall phrase. Cf. *United States* v. *Aguilar*, 515 U. S. 593, 615 (1995) (SCALIA, J., concurring in part and dissenting in part) (rejecting the canon's applicability to an omnibus clause that was "one of . . . several distinct and independent prohibitions" rather than "a general or collective term following a list of specific items to which a particular statutory command is applicable").

Moreover, it is not apparent what common attribute connects the specific items in §2680(c). Were we to use the canon to limit the meaning of "any other law enforcement officer," we would be required to determine the relevant limiting characteristic of "officer of customs or excise." In *Jarecki* v. *G. D. Searle & Co.*, 367 U. S. 303 (1961), for example, the Court invoked *noscitur a sociis* in limiting the scope of the term "'discovery'" to the common characteristic it shared with "'exploration'" and "'prospecting.'" *Id.*, at 307. The Court noted that all three words in conjunction "describe[d] income-producing activity in the oil and gas and mining industries." *Ibid.* Here, by contrast, no relevant common attribute immediately appears from the phrase "officer of customs or excise." Petitioner suggests that the common attribute is that both types of officers are charged with enforcing the customs and excise laws. But we see no reason why that should be the relevant characteristic as opposed to, for example, that officers of that type are commonly involved in the activities enumerated in the statute: the as-

sessment and collection of taxes and customs duties and the detention of property.

Petitioner's appeals to other interpretive principles are also unconvincing. Petitioner contends that his reading is supported by the canon *noscitur a sociis*, according to which "'a word is known by the company it keeps.'" *S. D. Warren Co.* v. *Maine Bd. of Environmental Protection*, 547 U. S. 370, 378 (2006). But the cases petitioner cites in support of applying *noscitur a sociis* involved statutes with stronger contextual cues. See *Gutierrez* v. *Ada*, 528 U. S. 250, 254–258 (2000) (applying the canon to narrow the relevant phrase, "any election," where it was closely surrounded by six specific references to gubernatorial elections); *Jarecki*, *supra*, at 306–309 (applying the canon to narrow the term "discoveries" to discoveries of mineral resources where it was contained in a list of three words, all of which applied to the oil, gas, and mining industries and could not conceivably all apply to any other industry). Here, although customs and excise are mentioned twice in § 2680(c), nothing in the overall statutory context suggests that customs and excise officers were the exclusive focus of the provision. The emphasis in subsection (c) on customs and excise is not inconsistent with the conclusion that "any other law enforcement officer" sweeps as broadly as its language suggests.

Similarly, the rule against superfluities lends petitioner sparse support. The construction we adopt today does not necessarily render "any officer of customs or excise" superfluous; Congress may have simply intended to remove any doubt that officers of customs or excise were included in "law enforcement officer[s]." See *Fort Stewart Schools* v. *FLRA*, 495 U. S. 641, 646 (1990) (noting that "technically unnecessary" examples may have been "inserted out of an abundance of caution"). Moreover, petitioner's construction threatens to render "any other law enforcement officer" superfluous because it is not clear when, if ever, "other law enforcement

officer[s]" act in a customs or excise capacity.[6] In any event, we do not woodenly apply limiting principles every time Congress includes a specific example along with a general phrase. See *Harrison*, 446 U. S., at 589, n. 6 (rejecting an argument that *ejusdem generis* must apply when a broad interpretation of the clause could render the specific enumerations unnecessary).

In the end, we are unpersuaded by petitioner's attempt to create ambiguity where the statute's text and structure suggest none. Had Congress intended to limit §2680(c)'s reach as petitioner contends, it easily could have written "any other law enforcement officer *acting in a customs or excise capacity*." Instead, it used the unmodified, all-encompassing phrase "any other law enforcement officer." Nothing in the statutory context requires a narrowing construction—indeed, as we have explained, the statute is most consistent and coherent when "any other law enforcement

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[6] As an example of "other law enforcement officer[s]" acting in an excise or customs capacity, petitioner cites *Formula One Motors, Ltd.* v. *United States*, 777 F. 2d 822, 823–824 (CA2 1985) (holding that the seizure of a vehicle still in transit from overseas by DEA agents who searched it for drugs was "sufficiently akin to the functions carried out by Customs officials to place the agents' conduct within the scope of section 2680(c)"). But it is not clear that the agents in that case were acting in an excise or customs capacity rather than in their ordinary capacity as law enforcement agents. It seems to us that DEA agents searching a car for drugs are acting in their capacity as officers charged with enforcing the Nation's drug laws, not the customs or excise laws.

Similarly, the dissent notes that 14 U. S. C. §89(a) authorizes Coast Guard officers to enforce customs laws. *Post*, at 233. But the very next subsection of §89 provides that Coast Guard officers effectively *are* customs officers when they enforce customs laws. See §89(b)(1) (providing that Coast Guard officers "insofar as they are engaged, pursuant to the authority contained in this section, in enforcing any law of the United States shall . . . be deemed to be acting as agents of the particular executive department . . . charged with the administration of the particular law"). As a result, a Coast Guard officer enforcing a customs law is a customs officer, not some "other law enforcement officer."

officer" is read to mean what it literally says. See *Norfolk & Western R. Co.*, 499 U. S., at 129 (noting that interpretive canons must yield "when the whole context dictates a different conclusion"). It bears emphasis, moreover, that § 2680(c), far from maintaining sovereign immunity for the entire universe of claims against law enforcement officers, does so only for claims "arising in respect of" the "detention" of property. We are not at liberty to rewrite the statute to reflect a meaning we deem more desirable.[7] Instead, we must give effect to the text Congress enacted: Section 2680(c) forecloses lawsuits against the United States for the unlawful detention of property by "any," not just "some," law enforcement officers.

III

For the reasons stated, the judgment of the Court of Appeals for the Eleventh Circuit is

Affirmed.

JUSTICE KENNEDY, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

Statutory interpretation, from beginning to end, requires respect for the text. The respect is not enhanced, however, by decisions that foreclose consideration of the text within the whole context of the statute as a guide to determining a legislature's intent. To prevent textual analysis from becoming so rarefied that it departs from how a legislator most likely understood the words when he or she voted for the law, courts use certain interpretative rules to consider text within the statutory design. These canons do not demand

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[7] Congress, we note, did provide an administrative remedy for lost property claimants like petitioner. Federal agencies have authority under 31 U. S. C. § 3723(a)(1) to settle certain "claim[s] for not more than $1,000 for damage to, or loss of, privately owned property that . . . is caused by the negligence of an officer or employee of the United States Government acting within the scope of employment." The BOP has settled more than 1,100 such claims in the last three years. Brief for Respondents 41, n. 17.

wooden reliance and are not by themselves dispositive, but they do function as helpful guides in construing ambiguous statutory provisions. Two of these accepted rules are *ejusdem generis* and *noscitur a sociis*, which together instruct that words in a series should be interpreted in relation to one another.

Today the Court holds, if my understanding of its opinion is correct, that there is only one possible way to read the statute. Placing implicit reliance upon a comma at the beginning of a clause, the Court says that the two maxims noted, and indeed other helpful and recognized principles of statutory analysis, are not useful as interpretative aids in this case because the clause cannot be understood by what went before. In my respectful submission the Court's approach is incorrect as a general rule and as applied to the statute now before us. Both the analytic framework and the specific interpretation the Court now employs become binding on the federal courts, which will confront other cases in which a series of words operate in a clause similar to the one we consider today. So this case is troubling not only for the result the Court reaches but also for the analysis it employs. My disagreements with the Court lead to this dissent.

I

A

The Federal Tort Claims Act (FTCA or Act) allows those who allege injury from governmental actions over a vast sphere to seek damages for tortious conduct. The enacting Congress enumerated 13 exceptions to the Act's broad waiver of sovereign immunity, all of which shield the Government from suit in specific instances. These exceptions must be given careful consideration in order to prevent interference with the governmental operations described. As noted in *Kosak* v. *United States*, 465 U. S. 848, 853, n. 9 (1984), however, "unduly generous interpretations of the ex-

ceptions run the risk of defeating the central purpose of the statute."

As the Court states, at issue here is the extent of the exception for suits arising from the detention of goods in defined circumstances. The relevant provision excepts from the general waiver

> "claim[s] arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer." 28 U. S. C. §2680(c).

Both on first reading and upon further, close consideration, the plain words of the statute indicate that the exception is concerned only with customs and taxes. The provision begins with a clause dealing exclusively with customs and tax duties. And the provision as a whole contains four express references to customs and tax, making revenue duties and customs and excise officers its most salient features. Cf. *Gutierrez* v. *Ada*, 528 U. S. 250, 254–255 (2000).

This is not to suggest that the Court's reading is wholly impermissible or without some grammatical support. After all, detention of goods is not stated until the outset of the second clause and at the end of the same clause the words "any other law enforcement officer" appear; so it can be argued that the first and second clauses of the provision are so separate that all detentions by all law enforcement officers in whatever capacity they might act are covered. Still, this ought not be the preferred reading; for between the beginning of the second clause and its closing reference to "any other law enforcement officer" appears another reference to "officer[s] of customs or excise," this time in the context of property detention. This is quite sufficient, in my view, to continue the limited scope of the exception. At the very least, the Court errs by adopting a rule which simply bars all consideration of the canons of *ejusdem generis* and *nosci-*

tur a sociis. And when those canons are consulted, together with other common principles of interpretation, the case for limiting the exception to customs and tax more than overcomes the position maintained by the Government and adopted by the Court.

The *ejusdem generis* canon provides that, where a seemingly broad clause constitutes a residual phrase, it must be controlled by, and defined with reference to, the "enumerated categories . . . which are recited just before it," so that the clause encompasses only objects similar in nature. *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 115 (2001). The words "any other law enforcement officer" immediately follow the statute's reference to "officer[s] of customs or excise," as well as the first clause's reference to the assessment of tax and customs duties. 28 U. S. C. § 2680(c).

The Court counters that § 2680(c) "is disjunctive, with one specific and one general category," rendering *ejusdem generis* inapplicable. *Ante*, at 225. The canon's applicability, however, is not limited to those statutes that include a laundry list of items. See, *e. g.*, *Norfolk & Western R. Co.* v. *Train Dispatchers*, 499 U. S. 117, 129 (1991) ("[W]hen a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration"). In addition, *ejusdem generis* is often invoked in conjunction with the interpretative canon *noscitur a sociis*, which provides that words are to be "'known by their companions.'" *Washington State Dept. of Social and Health Servs.* v. *Guardianship Estate of Keffeler*, 537 U. S. 371, 384 (2003) (quoting *Gutierrez*, *supra*, at 255). The general rule is that the "meaning of a word, and, consequently, the intention of the legislature," should be "ascertained by reference to the context, and by considering whether the word in question and the surrounding words are, in fact, *ejusdem generis*, and referable to the same subject-matter." *Neal* v. *Clark*, 95 U. S. 704, 709 (1878) (internal quotation marks omitted).

A proper reading of §2680(c) thus attributes to the last phrase ("any other law enforcement officer") the discrete characteristic shared by the preceding phrases ("officer[s] of customs or excise" and "assessment or collection of any tax or customs duty"). See also *Norton* v. *Southern Utah Wilderness Alliance*, 542 U. S. 55, 62–63 (2004) (applying *ejusdem generis* to conclude that "'failure to act'" means "failure to take an *agency action*" (emphasis in original)); *Washington State Dept. of Social and Health Servs.*, *supra*, at 384–385 (holding that the phrase "other legal process" in 42 U. S. C. §407(a) refers only to the utilization of a judicial or quasi-judicial mechanism, the common attribute shared by the phrase and the statutory enumeration preceding it). Had Congress intended otherwise, in all likelihood it would have drafted the section to apply to "any law enforcement officer, including officers of customs and excise," rather than tacking "any other law enforcement officer" on the end of the enumerated categories as it did here.

The common attribute of officers of customs and excise and other law enforcement officers is the performance of functions most often assigned to revenue officers, including, *inter alia*, the enforcement of the United States' revenue laws and the conduct of border searches. Although officers of customs and officers of excise are in most instances the only full-time staff charged with this duty, officers of other federal agencies and general law enforcement officers often will be called upon to act in the traditional capacity of a revenue officer. For example, Drug Enforcement Administration (DEA) or Federal Bureau of Investigation (FBI) agents frequently assist customs officials in the execution of border searches. See, *e. g.*, *United States* v. *Gurr*, 471 F. 3d 144, 147–149 (CADC 2006) (FBI involved in search of financial documents at border); *United States* v. *Boumelhem*, 339 F. 3d 414, 424 (CA6 2003) ("FBI had been cooperating with Customs as a part of a joint task force"); *Formula One Motors, Ltd.* v. *United States*, 777 F. 2d 822, 824 (CA2 1985) (DEA

agents were performing functions traditionally carried out by customs officials where they seized and searched an automobile that had been shipped from abroad and was still in its shipping container). Cf. *United States* v. *Schoor*, 597 F. 2d 1303, 1305–1306 (CA9 1979) (upholding constitutionality of cooperation among federal agencies in border searches). Similarly, 14 U. S. C. §89(a) grants the Coast Guard plenary authority to stop and board American vessels to inspect for obvious customs violations. See, *e. g.*, *United States* v. *Gil-Carmona*, 497 F. 3d 52 (CA1 2007) (Coast Guard assisted an Immigration and Customs Enforcement patrol aircraft in interdicting a vessel off the coast of Puerto Rico). To the extent they detain goods whose possession violates customs laws, the Coast Guard officers—while not "officer[s] of customs or excise," 28 U. S. C. §2680(c)—are without doubt engaging in the enforcement of the United States' revenue laws.

The same is true in the tax context. Under 26 U. S. C. §6321, a delinquent taxpayer's property is subject to forfeiture, see *Glass City Bank* v. *United States*, 326 U. S. 265 (1945), and may be seized by any federal agent assisting the Internal Revenue Service (IRS) in executing the forfeiture, cf. *United States* v. *$515,060.42 in United States Currency*, 152 F. 3d 491, 495 (CA6 1998) (IRS and FBI jointly seized currency). Thus, the final phrase "any other law enforcement officer" has work to do and makes considerable sense when the statute is limited in this way.

B

The Court reaches its contrary conclusion by concentrating on the word "any" before the phrase "other law enforcement officer." 28 U. S. C. §2680(c). It takes this single last phrase to extend the statute so that it covers all detentions of property by any law enforcement officer in whatever capacity he or she acts. There are fundamental problems with this approach, in addition to the ones already mentioned.

First, the Court's analysis cannot be squared with the longstanding recognition that a single word must not be read in isolation but instead defined by reference to its statutory context. See *King* v. *St. Vincent's Hospital*, 502 U. S. 215, 221 (1991) ("[T]he meaning of statutory language, plain or not, depends on context"); *Dolan* v. *Postal Service*, 546 U. S. 481, 486 (2006) ("A word in a statute may or may not extend to the outer limits of its definitional possibilities. Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis"). This is true even of facially broad modifiers. The word "any" can mean "different things depending upon the setting," *Nixon* v. *Missouri Municipal League*, 541 U. S. 125, 132 (2004); see also *Small* v. *United States*, 544 U. S. 385, 388 (2005) (citing cases), and must be limited in its application "to those objects to which the legislature intended to apply them," *United States* v. *Palmer*, 3 Wheat. 610, 631 (1818).

In *Gutierrez*, 528 U. S., at 254–255, for example, we held that the phrase "in any election" in the Organic Act of Guam, 48 U. S. C. § 1422, does not refer broadly to all elections but only to the election of Guam's Governor and Lieutenant Governor. The Court explained that the reference to "any election" is preceded by two references to gubernatorial elections and followed by four more references. In the context of such "relentless repetition," the Court concluded that the phrase must be "known by [its] companions." 528 U. S., at 255. Likewise, in *United States* v. *Alvarez-Sanchez*, 511 U. S. 350, 357 (1994), the Court addressed a phrase similar to the statutory provision we interpret today. The Court noted that the respondent erred in "placing dispositive weight on the broad statutory reference to 'any' law enforcement officer or agency without considering the rest of the statute," and consulted instead "'the context in which [the

phrase] is used.'" *Id.*, at 357, 358 (quoting *Deal* v. *United States*, 508 U. S. 129, 132 (1993); alteration in original).

As already mentioned, the context of §2680(c) suggests that, in accordance with these precedents, the statutory provision should be interpreted narrowly to apply only to customs and revenue duties. Its first clause deals exclusively with customs and tax duties and, between the first and second clauses, it refers two more times to customs and tax. See *Gutierrez*, *supra*, at 254–255; *A-Mark, Inc.* v. *United States Secret Serv. Dept. of Treasury*, 593 F. 2d 849, 851 (CA9 1978) (Tang, J., concurring) ("The clauses both dwell exclusively on customs and taxes, except for the final reference to other law-enforcement officers").

Further, §2680(c) provides that there will be immunity only where there has been a "detention" of goods, merchandise, or property. "[D]etention" is defined by legal and nonlegal dictionaries alike as a "compulsory," "forced," or "punitive" containment. Black's Law Dictionary 459 (7th ed. 1999) (compulsory); American Heritage Dictionary 494 (4th ed. 2000) (forced or punitive). The issue whether petitioner's property was "detained" within the meaning of the statute was not raised in this case; and so the Court leaves for another day the exception's applicability to these facts. See *ante*, at 218, n. 2. It is important, however, to bear in mind that, in the context of detention of goods by customs and tax agents, it will be the rare case when property is voluntarily turned over, rather than forcibly appropriated; indeed, customs and tax agents are in the regular business of seizing and forfeiting property, as are law enforcement agents acting in the capacity of revenue enforcement. See Dept. of Homeland Security, U. S. Customs and Border Protection and U. S. Immigration and Customs Enforcement, Mid-Year FY2007—Top IPR Commodities Seized (May 2007), online at http://www.cbp.gov/linkhandler/cgov/import/commercial_enforcement/ipr/seizure/07_midyr_seizures.ctt/07_midyr_seizures.pdf (all Internet materials as visited Jan. 10, 2008, and available in

Clerk of Court's case file) (by midyear 2007, customs officials had executed 7,245 commodity seizures, worth a total of $110,198,350); GAO, Border Security: Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nation's Ports of Entry 17 (GAO–08–219, Nov. 2007), online at http://www.gao.gov/new.items/d08219.pdf ("According to [U. S. Customs and Border Protection (CBP)], in fiscal year 2006, CBP officers . . . seized more than 644,000 pounds of illegal drugs, intercepted nearly 1.7 million prohibited agricultural items, and seized over $155 million in illegal commercial merchandise, such as counterfeit footwear and handbags" (footnote omitted)).

In other contexts, however, the word "detention" may or may not accurately describe the nature of the Government action. A prisoner's voluntary decision to deliver property for transfer to another facility, for example, bears a greater similarity to a "bailment"—the delivery of personal property after being held by the prison in trust, see American Heritage Dictionary, *supra*, at 134—than to a "detention."

Not a single federal statute mentions the Federal Bureau of Prisons (BOP) in the context of property detention. On the other hand, the majority of the nine federal statutes other than §2680(c) containing a reference to the detention of goods, merchandise, or other property are specific to customs and excise. Compare 19 U. S. C. §1499(a) (authorizing customs agents to examine and detain imported merchandise); §1595a(c)(3) (authorizing customs officials to detain merchandise introduced contrary to law); 26 U. S. C. §5311 (authorizing internal revenue officers to detain containers containing distilled spirits, wines, or beer where there is reason to believe applicable taxes have not been paid); 50 U. S. C. App. §2411(a)(2)(A) (authorizing customs officials to seize and detain goods at ports of entry in the enforcement of war and national defense); 22 U. S. C. §464 (authorizing customs agents to detain armed vessels and any property

found thereon), with 18 U. S. C. §981(e) (" . . . The Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency . . . . The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials"); 28 U. S. C. §524(c)(1) (2000 ed. and Supp. V) (appropriating a special fund for the purpose of property detention under any law enforced or administered by the Department of Justice); 31 U. S. C. §9703(a)(1)(A) (establishing a Department of Treasury Forfeiture Fund to pay the expenses of property detention); 16 U. S. C. §§1540(e)(3), 3375(b) (authorizing the detention of goods and packages for inspection where there is reason to believe there has been a violation of laws governing fish, wildlife, and plants).

This would seem to indicate that Congress contemplated that the statutory provision considered here would apply only in those narrow circumstances where the officer is in the regular business of forfeiting property, namely, revenue enforcement. At the very least, it demonstrates that "detention" will be a difficult concept to apply case by case under the majority's interpretation of the statute—a problem alleviated by limiting the statute to customs and tax.

Second, the Court's construction of the phrase "any other law enforcement officer" runs contrary to "'our duty "to give effect, if possible, to every clause and word of a statute."'" *Duncan* v. *Walker*, 533 U. S. 167, 174 (2001) (quoting *United States* v. *Menasche*, 348 U. S. 528, 538–539 (1955)). The Court's reading renders "officer[s] of customs or excise" mere surplusage, as there would have been no need for Congress to have specified that officers of customs and officers of excise were immune if they indeed were subsumed within the allegedly all-encompassing "any" officer clause. See *Circuit City Stores*, 532 U. S., at 114.

Third, though the final reference to "any other law enforcement officer" does result in some ambiguity, the legislative history, by virtue of its exclusive reference to customs and excise, confirms that Congress did not shift its attention from the context of revenue enforcement when it used these words at the end of the statute. See, *e. g.*, S. Rep. No. 1400, 79th Cong., 2d Sess., 33 (1946) (in discussing 28 U. S. C. § 2680(c) referring only to "the detention of goods by customs officers"); A. Holtzoff, Report on Proposed Federal Tort Claims Bill 16 (1931) (noting that the property-detention exception was added to the legislation to "include immunity from liability in respect of loss in connection with the detention of goods or merchandise by any officer of customs or excise").

Indeed, the Court's construction reads the exception to defeat the central purpose of the statute, an interpretative danger the Court has warned against in explicit terms. See *Kosak*, 465 U. S., at 854, n. 9 (the Court must identify only "'those circumstances which are within the words and reason of the exception'—no less and no more" (quoting *Dalehite* v. *United States*, 346 U. S. 15, 31 (1953))). It is difficult to conceive that the FTCA, which was enacted by Congress to make the tort liability of the United States "the same as that of a private person under like circumstance[s]," S. Rep. No. 1400, at 32, would allow any officer under any circumstance to detain property without being accountable under the Act to those injured by his or her tortious conduct. If Congress wanted to say that all law enforcement officers may detain property without liability in tort, including when they perform general law enforcement tasks, it would have done so in more express terms; one would expect at least a reference to law enforcement officers outside the customs or excise context either in the text of the statute or in the legislative history. In the absence of that reference, the Court ought not presume that the liberties of the person who owns the property would be so lightly dismissed and disregarded.

II

A

The 2000 amendments do not require a contrary conclusion. The Civil Asset Forfeiture Reform Act of 2000 (CAFRA), as applicable here, limits the operation of §2680(c)'s exception. See §3(a), 114 Stat. 211. The limitation (*i. e.*, the exception to the exception) applies where there has been an injury or loss of goods and "the property was seized for the purpose of forfeiture under any provision of Federal law." 28 U. S. C. §2680(c)(1). In my view the amendment establishes that officers of customs and excise, and law enforcement officials performing functions traditionally reserved for revenue officers, shall be liable in tort for damage to the property when the owner's interest in the goods in the end is not forfeited (and when other conditions apply). And this is so regardless of whether the officer acted under the revenue laws of the United States or, alternatively, another civil or criminal forfeiture provision.

The majority's reading of CAFRA for a contrary proposition is premised on the assumption that there is no circumstance in which a customs or excise officer, or an officer acting in such a capacity, would "enforce [civil] forfeiture laws unrelated to customs or excise." *Ante*, at 222. But customs and tax officials, along with law enforcement officers performing customs and tax duties, routinely do just that. See, *e. g.*, Customs and Border Protection, Seizures and Penalties Links, http://www.cbp.gov/xp/cgov/toolbox/legal/authority_enforce/seizures_penalties.xml (CBP has "full authority to . . . seize merchandise for violation of CBP laws or those of other federal agencies that are enforced by CBP"). Indeed, the customs laws expressly contemplate forfeitures and seizures of property under nonrevenue provisions. See, *e. g.*, 19 U. S. C. §1600 ("The procedures [governing seizures of property] set forth in [§§1602–1619] shall apply to seizures of any property effected by customs officers under any law

enforced or administered by the Customs Service unless such law specifies different procedures").

By way of example, a customs or excise official might effect a civil forfeiture of currency or monetary instruments under the Bank Secrecy Act, 31 U. S. C. §5317(c) (2000 ed., Supp. V); or of counterfeit instruments, illegal music recordings, or firearms under the Contraband Act, 49 U. S. C. §80302 *et seq.* (2000 ed. and Supp. IV). Similarly, a DEA agent assisting a customs official in a border search (and thus acting in a customs capacity) might effect a civil forfeiture of vehicles or goods associated with the drug trade under federal drug laws. See 21 U. S. C. §881 (2000 ed. and Supp. V); see also, *e. g.*, *Formula One Motors*, 777 F. 2d, at 822–823. Though acting pursuant to a civil forfeiture law that is not specific to customs and taxes, the DEA agent would be covered by §2680(c)'s exception to the exception because he or she would be acting in a traditional revenue capacity—that of conducting a routine search of persons and effects of persons crossing an international boundary.

The Court counters that the Bank Secrecy Act, 31 U. S. C. §5317(c), is not "unrelated to customs or excise" because it cross-references a requirement for exporting and importing monetary instruments, §5316. See *ante*, at 223, n. 5. But §5316, despite being "[r]elated" to customs duties, is part of the federal Currency and Foreign Transactions Reporting Act, see §5311 *et seq.* (2000 ed. and Supp. IV), not the United States' customs laws.

The Court also notes that customs agents have the authority to seize contraband under the customs laws, particularly 19 U. S. C. §1595a(c)(1). I do not dispute that customs agents often act under customs laws when seizing property. My point, which goes unrefuted by the Court, is that it was reasonable for Congress to have specified that customs and excise officers would be covered by the exception to the exception even when acting pursuant to federal laws more generally. For instance, §1595a(c)(1) applies only where "[m]er-

chandise . . . is introduced . . . into the United States contrary to law," which appears to target the importation of property subject to duty or entry restrictions. Title 28 U. S. C. § 2680(c), by contrast, was amended in 2000 to encompass not only the detention of "goods or merchandise" but the detention of all "property." § 3(a), 114 Stat. 211. In circumstances not involving imported "merchandise," then, the customs official would be acting pursuant to law enforcement authority derived not from the customs laws but, *inter alia*, the Contraband and Bank Secrecy Acts. The same is true of noncustoms officers acting in a customs capacity.

At the very least this renders the Court's reliance on the views of a subsequent Congress suspect. We have said "subsequent acts can shape or focus" the meaning of a statute. *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 143 (2000). There is no indication, however, that by adding a forfeiture exception to the exception, Congress intended to broaden the scope of the original immunity. Cf. *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U. S. 180, 199–200 (1963).

B

Though the Court does not much rely on the point, perhaps it has concerns respecting suits like the one now before us. Petitioner sues for lost property valued at about $177. Law enforcement officers in the federal prison system must take inventory of the property they store, and with just under 200,000 persons in the federal prison population, see Federal Bureau of Prisons, Weekly Population Report, online at http://www.bop.gov/news/weekly_report.jsp (reporting 199,342 federal inmates as of January 7, 2008), the burden on the Government to account for missing items of little value could be a substantial one.

There are sound reasons, though, for rejecting this concern in interpreting the statute. To begin with, as already discussed, if it were a congressional objective to give a comprehensive exception to all officers who detain property,

Congress most likely would have written a specific provision to address the point, quite apart from the special concerns it had with customs and revenue. The exception as the Court now interprets it extends not only to trivial detentions, not only to prison officials, not only to those in custody, but to all detentions of property of whatever value held by all law enforcement officials, a reading that simply does not comport with the plain text and context of the statute.

Second, as the Court observed when interpreting another exception that raised the concern of numerous frivolous claims, liability for negligent transmission "is a risk shared by any business [involved in management of detention facilities]," including the Government. *Dolan*, 546 U. S., at 491.

Third, there are already in place administrative procedures that must be exhausted before the suit is allowed, diminishing the number of frivolous suits that would be heard in federal court. See 42 U. S. C. § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted"). Under 28 CFR § 543.31(a) (2007), the "owner of the damaged or lost property" first must file an FTCA claim with the BOP regional office; the BOP, in turn, is authorized by statute to settle administrative claims for not more than $1,000, see 31 U. S. C. § 3723(a), which likely encompasses most claims brought by federal prisoners. Only if the prisoner is "dissatisfied with the final agency action" may he or she file suit in an "appropriate U. S. District Court." 28 CFR § 543.32(g).

* * *

If Congress had intended to give sweeping immunity to all federal law enforcement officials from liability for the detention of property, it would not have dropped this phrase onto the end of the statutory clause so as to appear there as something of an afterthought. The seizure of property by an of-

ficer raises serious concerns for the liberty of our people and the Act should not be read to permit appropriation of property without a remedy in tort by language so obscure and indirect.

For these reasons, in my view, the judgment of the Court of Appeals ought to be reversed.

JUSTICE BREYER, with whom JUSTICE STEVENS joins, dissenting.

I agree with JUSTICE KENNEDY that context makes clear that Congress intended the phrase "any other law enforcement officer" to apply only to officers carrying out customs or excise duties. See 28 U. S. C. § 2680(c). But I write separately to emphasize, as JUSTICE KENNEDY's dissent itself makes clear, that the relevant context extends well beyond Latin canons and other such purely textual devices.

As with many questions of statutory interpretation, the issue here is not the *meaning* of the words. The dictionary meaning of each word is well known. Rather, the issue is the statute's *scope*. What boundaries did Congress intend to set? To what circumstances did Congress intend the phrase, as used in *this* statutory provision, to apply? The majority answers this question by referring to an amendment that creates an exception for certain forfeitures and by emphasizing the statutory word "any." As to the amendment, I find JUSTICE KENNEDY's counterargument convincing. See *ante*, at 239–241 (dissenting opinion). And, in my view, the word "any" provides no help whatsoever.

The word "any" is of no help because all speakers (including writers and legislators) who use general words such as "all," "any," "never," and "none" normally rely upon context to indicate the limits of time and place within which they intend those words to do their linguistic work. And with the possible exception of the assertion of a universal truth, say, by a mathematician, scientist, philosopher, or theologian, such limits almost always exist. When I call out to my wife,

"There isn't any butter," I do not mean, "There isn't any butter in town." The context makes clear to her that I am talking about the contents of our refrigerator. That is to say, it is context, not a dictionary, that sets the boundaries of time, place, and circumstance within which words such as "any" will apply. See *United States* v. *Palmer*, 3 Wheat. 610, 631 (1818) (Marshall, C. J.) ("[G]eneral words," such as the word "'any'," must "be limited" in their application "to those objects to which the legislature intended to apply them"); *Small* v. *United States*, 544 U. S. 385, 388 (2005) ("The word 'any' considered alone cannot answer" the question "whether the statutory reference 'convicted in *any* court' includes a conviction entered in a *foreign* court"); *Nixon* v. *Missouri Municipal League*, 541 U. S. 125, 132 (2004) ("'[A]ny'" means "different things depending upon the setting"); *United States* v. *Alvarez-Sanchez*, 511 U. S. 350, 357 (1994) ("[R]espondent errs in placing dispositive weight on the broad statutory reference to 'any' law enforcement officer or agency without considering the rest of the statute").

Context, of course, includes the words immediately surrounding the phrase in question. And canons such as *ejusdem generis* and *noscitur a sociis* offer help in evaluating the significance of those surrounding words. Yet that help is limited. That is because other contextual features can show that Congress intended a phrase to apply more broadly than the immediately surrounding words by themselves suggest. See *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 138–140 (2001) (SOUTER, J., dissenting) (finding "good reasons" not to apply *ejusdem generis* because the statute's history and purposes make clear that the words "any other class of workers" in the phrase "seamen, railroad employees, or any other class of workers" refer, not just to other transportation workers, but to workers of all kinds including retail store clerks). It is because canons of construction are not "conclusive" and "are often countered . . . by some maxim

pointing in a different direction." *Id.*, at 115 (majority opinion). And it is because these particular canons simply crystallize what English speakers already know, namely, that lists often (but not always) group together items with similar characteristics. That is why we cannot, without comic effect, yoke radically different nouns to a single verb, *e. g.*, "He caught three salmon, two trout, and a cold."

In this case, not only the immediately surrounding words but also every other contextual feature supports JUSTICE KENNEDY's conclusion. The textual context includes the location of the phrase within a provision that otherwise exclusively concerns customs and revenue duties. And the nontextual context includes several features that, taken together, indicate that Congress intended a narrow tort-liability exception related to customs and excise.

First, drafting history shows that the relevant portion of the bill that became the Federal Tort Claims Act concerned only customs and excise. Initially, the relevant provision of the bill exempted only claims "arising in respect of the assessment or collection of any tax or customs duty." See, *e. g.*, S. 4377, 71st Cong., 2d Sess., 4 (1930). In 1931, a Special Assistant to the Attorney General, Alexander Holtzoff, wrote additional draft language, namely, "or the detention of any goods or merchandise by any officer of customs or excise or *any other law enforcement officer*." Bill Draft, p. 2, reprinted in Report on Proposed Federal Tort Claims Bill p. 2 (1931) (emphasis added). Holtzoff, in a report to a congressional agency, said that the expanded language sought "to include immunity from liability in respect of loss in connection with the detention of goods or merchandise by any officer of customs or excise." *Id.*, at 16. Holtzoff explained that the language was suggested by a similar British bill that mentioned only customs and excise officials. *Ibid.* (referring to the bill proposed in the Crown Proceedings Committee Report § 11(5)(*c*), pp. 17–18 (Apr. 1927) (Cmd. 2842) ("No proceedings shall lie under this section . . . for

or in respect of the loss of or any deterioration or damage occasioned to, or any delay in the release of, any goods or merchandise by reason of anything done or omitted to be done by any officer of customs and excise acting as such")); see *Kosak* v. *United States*, 465 U. S. 848, 857, n. 13 (1984) (While "the ideas expressed [in Holtzoff's report] should not be given great weight in determining the intent of the Legislature," at least in some circumstances, "it seems to us senseless to ignore entirely the views of [the provision's] draftsman"). And Members of Congress repeatedly referred to the exception as encompassing claims involving customs and excise functions. See, *e. g.*, H. R. Rep. No. 2428, 76th Cong., 3d Sess., 5 (1940); S. Rep. No. 1196, 77th Cong., 2d Sess., 7 (1942); H. R. Rep. No. 2245, 77th Cong., 2d Sess., 10 (1942); H. R. Rep. No. 1287, 79th Cong., 1st Sess., 6 (1945); S. Rep. No. 1400, 79th Cong., 2d Sess., 33 (1946).

Second, insofar as Congress sought, through the Act's exceptions, to preclude tort suits against the Government where "adequate remedies were already available," *Kosak*, *supra*, at 858; see S. Rep. No. 1400, at 33; H. R. Rep. No. 1287, at 6 (setting forth that purpose), a limited exception makes sense; a broad exception does not. Other statutes already provided recovery for plaintiffs harmed by federal officers enforcing customs and tax laws but not for plaintiffs harmed by all other federal officers enforcing most other laws. See *Bazuaye* v. *United States*, 83 F. 3d 482, 485–486 (CADC 1996) (detailing history).

Third, the practical difference between a limited and a broad interpretation is considerable, magnifying the importance of the congressional silence to which JUSTICE KENNEDY points, see *ante*, at 238. A limited interpretation of the phrase "any other law enforcement officer" would likely encompass only those law enforcement officers working, say, at borders and helping to enforce customs and excise laws. The majority instead interprets this provision to include the tens of thousands of officers performing unrelated tasks.

The Justice Department estimates that there are more than 100,000 law enforcement officers, not including members of the armed services. See, *e. g.*, Dept. of Justice, Bureau of Justice Statistics Bulletin, B. Reaves, Federal Law Enforcement Officers, 2004, p. 1 (July 2006). And although the law's history contains much that indicates the provision's scope is limited to customs and excise, it contains *nothing at all* suggesting an intent to apply the provision more broadly, indeed, to multiply the number of officers to whom it applies by what is likely one or more orders of magnitude. It is thus not the Latin canons, *ejusdem generis* and *noscitur a sociis*, that shed light on the application of the statutory phrase but JUSTICE SCALIA's more pertinent and easily remembered English-language observation that Congress "does not . . . hide elephants in mouseholes." *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001).

For these reasons, I dissent and I join JUSTICE KENNEDY's dissent.

Syllabus

LARUE *v.* DEWOLFF, BOBERG & ASSOCIATES, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 06–856. Argued November 26, 2007—Decided February 20, 2008

Petitioner, a participant in a defined contribution pension plan, alleged that the plan administrator's failure to follow petitioner's investment directions "depleted" his interest in the plan by approximately $150,000 and amounted to a breach of fiduciary duty under the Employee Retirement Income Security Act of 1974 (ERISA). The District Court granted respondents judgment on the pleadings, and the Fourth Circuit affirmed. Relying on *Massachusetts Mutual Life Ins. Co.* v. *Russell*, 473 U. S. 134, the Circuit held that ERISA §502(a)(2) provides remedies only for entire plans, not for individuals.

Held: Although §502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries, it does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account. Section 502(a)(2) provides for suits to enforce the liability-creating provisions of §409, concerning breaches of fiduciary duties that harm plans. The principal statutory duties imposed by §409 relate to the proper management, administration, and investment of plan assets, with an eye toward ensuring that the benefits authorized by the plan are ultimately paid to plan participants. The misconduct that petitioner alleges falls squarely within that category, unlike the misconduct in *Russell*. There, the plaintiff received all of the benefits to which she was contractually entitled, but sought consequential damages arising from a delay in the processing of her claim. *Russell*'s emphasis on protecting the "entire plan" reflects the fact that the disability plan in *Russell*, as well as the typical pension plan at that time, promised participants a fixed benefit. Misconduct by such a plan's administrators will not affect an individual's entitlement to a defined benefit unless it creates or enhances the risk of default by the entire plan. For defined contribution plans, however, fiduciary misconduct need not threaten the entire plan's solvency to reduce benefits below the amount that participants would otherwise receive. Whether a fiduciary breach diminishes plan assets payable to all participants or only to particular individuals, it creates the kind of harms that concerned §409's draftsmen. Thus,

Syllabus

Russell's "entire plan" references, which accurately reflect § 409's operation in the defined benefit context, are beside the point in the defined contribution context. Pp. 252–256.

450 F. 3d 570, vacated and remanded.

STEVENS, J., delivered the opinion of the Court, in which SOUTER, GINSBURG, BREYER, and ALITO, JJ., joined. ROBERTS, C. J., filed an opinion concurring in part and concurring in the judgment, in which KENNEDY, J., joined, *post*, p. 257. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA, J., joined, *post*, p. 260.

Peter K. Stris argued the cause for petitioner. With him on the briefs were *Brendan S. Maher*, *Jean-Claude André*, *Robert E. Hoskins*, and *Shaun P. Martin*.

Matthew D. Roberts argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement*, *Deputy Solicitor General Kneedler*, *Jonathan L. Snare*, and *Elizabeth Hopkins*.

Thomas P. Gies argued the cause for respondents. With him on the brief were *Clifton Elgarten* and *Ellen M. Dwyer*.*

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*Briefs of *amici curiae* urging reversal were filed for AARP by *Mary Ellen Signorille*, *Jay E. Sushelsky*, and *Melvin R. Radowitz*; for the Air Line Pilots Association, International, by *Jani K. Rachelson*; for Eleven Law Professors by *Paul A. Montuori* and *Debra A. Davis*; for the Pension Rights Center by *Marc I. Machiz* and *David S. Preminger*; and for the Self Insurance Institute of America, Inc., by *John E. Barry*, *Thomas W. Brunner*, *Lawrence H. Mirel*, *Bryan B. Davenport*, and *George J. Pantos*.

Briefs of *amici curiae* urging affirmance were filed for the American Council of Life Insurers by *Peter J. Rusthoven*, *Bart A. Karwath*, and *Carl B. Wilkerson*; for the Chamber of Commerce of the United States of America et al. by *Mark A. Casciari*, *Robin S. Conrad*, *Shane Brennan*, *Richard Whiting*, *Scott Talbott*, and *Diane Soubly*; and for the ERISA Industry Committee by *John M. Vine*, *Robert A. Long, Jr.*, *Jeffrey G. Huvelle*, and *Thomas L. Cubbage III*.

Jeffrey Greg Lewis and *Terisa E. Chaw* filed a brief for the National Employment Lawyers Association as *amicus curiae*.

JUSTICE STEVENS delivered the opinion of the Court.

In *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134 (1985), we held that a participant in a disability plan that paid a fixed level of benefits could not bring suit under § 502(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 891, 29 U. S. C. § 1132(a)(2), to recover consequential damages arising from delay in the processing of her claim. In this case we consider whether that statutory provision authorizes a participant in a defined contribution pension plan to sue a fiduciary whose alleged misconduct impaired the value of plan assets in the participant's individual account.[1] Relying on our decision in *Russell*, the Court of Appeals for the Fourth Circuit held that § 502(a)(2) "provides remedies only for entire plans, not for individuals. . . . Recovery under this subsection must 'inure[ ] to the benefit of the plan *as a whole*,' not to particular persons with rights under the plan." 450 F. 3d 570, 572–573 (2006) (quoting *Russell*, 473 U. S., at 140). While language in our *Russell* opinion is consistent with that conclusion, the rationale for *Russell*'s holding supports the opposite result in this case.

I

Petitioner filed this action in 2004 against his former employer, DeWolff, Boberg & Associates, Inc. (DeWolff), and the ERISA-regulated 401(k) retirement savings plan administered by DeWolff (Plan). The Plan permits participants to direct the investment of their contributions in accordance

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[1] As its names imply, a "defined contribution plan" or "individual account plan" promises the participant the value of an individual account at retirement, which is largely a function of the amounts contributed to that account and the investment performance of those contributions. A "defined benefit plan," by contrast, generally promises the participant a fixed level of retirement income, which is typically based on the employee's years of service and compensation. See §§ 3(34)–(35), 88 Stat. 838, 29 U. S. C. §§ 1002(34)–(35); P. Schneider & B. Freedman, ERISA: A Comprehensive Guide § 3.02 (2d ed. 2003).

with specified procedures and requirements. Petitioner alleged that in 2001 and 2002 he directed DeWolff to make certain changes to the investments in his individual account, but DeWolff never carried out these directions. Petitioner claimed that this omission "depleted" his interest in the Plan by approximately $150,000, and amounted to a breach of fiduciary duty under ERISA. The complaint sought " 'make-whole' or other equitable relief as allowed by [§ 502(a)(3)]," as well as "such other and further relief as the court deems just and proper." Civil Action No. 2:04–1747–18 (D. S. C.), p. 4, 2 Record, Doc. 1.

Respondents filed a motion for judgment on the pleadings, arguing that the complaint was essentially a claim for monetary relief that is not recoverable under § 502(a)(3). Petitioner countered that he "d[id] not wish for the court to award him any money, but . . . simply want[ed] the plan to properly reflect that which would be his interest in the plan, but for the breach of fiduciary duty." Reply to Defendants Motion to Dismiss, p. 7, 3 *id.*, Doc. 17. The District Court concluded, however, that since respondents did not possess any disputed funds that rightly belonged to petitioner, he was seeking damages rather than equitable relief available under § 502(a)(3). Assuming, *arguendo*, that respondents had breached a fiduciary duty, the District Court nonetheless granted their motion.

On appeal petitioner argued that he had a cognizable claim for relief under §§ 502(a)(2) and 502(a)(3) of ERISA. The Court of Appeals stated that petitioner had raised his § 502(a)(2) argument for the first time on appeal, but nevertheless rejected it on the merits.

Section 502(a)(2) provides for suits to enforce the liability-creating provisions of § 409, concerning breaches of fiduciary duties that harm plans.[2] The Court of Appeals cited lan-

[2] Section 409(a) provides:

"Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by

guage from our opinion in *Russell* suggesting that these provisions "protect the entire plan, rather than the rights of an individual beneficiary." 473 U. S., at 142. It then characterized the remedy sought by petitioner as "personal" because he "desires recovery to be paid into his plan account, an instrument that exists specifically for his benefit," and concluded:

> "We are therefore skeptical that plaintiff's individual remedial interest can serve as a legitimate proxy for the plan in its entirety, as [§ 502(a)(2)] requires. To be sure, the recovery plaintiff seeks could be seen as accruing to the plan in the narrow sense that it would be paid into plaintiff's personal plan *account*, which is part of the plan. But such a view finds no license in the statutory text, and threatens to undermine the careful limitations Congress has placed on the scope of ERISA relief." 450 F. 3d, at 574.

The Court of Appeals also rejected petitioner's argument that the make-whole relief he sought was "equitable" within the meaning of § 502(a)(3). Although our grant of certiorari, 551 U. S. 1130 (2007), encompassed the § 502(a)(3) issue, we do not address it because we conclude that the Court of Appeals misread § 502(a)(2).

II

As the case comes to us we must assume that respondents breached fiduciary obligations defined in § 409(a), and that

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this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act." 88 Stat. 886, 29 U. S. C. § 1109(a).

those breaches had an adverse impact on the value of the Plan assets in petitioner's individual account. Whether petitioner can prove those allegations and whether respondents may have valid defenses to the claim are matters not before us.[3] Although the record does not reveal the relative size of petitioner's account, the legal issue under §502(a)(2) is the same whether his account includes 1% or 99% of the total assets in the Plan.

As we explained in *Russell*, and in more detail in our later opinion in *Varity Corp.* v. *Howe*, 516 U. S. 489, 508–512 (1996), §502(a) of ERISA identifies six types of civil actions that may be brought by various parties. The second, which is at issue in this case, authorizes the Secretary of Labor as well as plan participants, beneficiaries, and fiduciaries, to bring actions on behalf of a plan to recover for violations of the obligations defined in §409(a). The principal statutory duties imposed on fiduciaries by that section "relate to the proper management, administration, and investment of fund assets," with an eye toward ensuring that "the benefits authorized by the plan" are ultimately paid to participants and beneficiaries. *Russell*, 473 U. S., at 142; see also *Varity*, 516 U. S., at 511–512 (noting that §409's fiduciary obligations "relat[e] to the plan's financial integrity" and "reflec[t] a special congressional concern about plan asset management"). The misconduct alleged by petitioner in this case falls squarely within that category.[4]

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[3] For example, we do not decide whether petitioner made the alleged investment directions in accordance with the requirements specified by the Plan, whether he was required to exhaust remedies set forth in the Plan before seeking relief in federal court pursuant to §502(a)(2), or whether he asserted his rights in a timely fashion.

[4] The record does not reveal whether the alleged $150,000 injury represents a decline in the value of assets that DeWolff should have sold or an increase in the value of assets that DeWolff should have purchased. Contrary to respondents' argument, however, §502(a)(2) encompasses ap-

The misconduct alleged in *Russell*, by contrast, fell outside this category. The plaintiff in *Russell* received all of the benefits to which she was contractually entitled, but sought consequential damages arising from a delay in the processing of her claim. 473 U. S., at 136–137. In holding that § 502(a)(2) does not provide a remedy for this type of injury, we stressed that the text of § 409(a) characterizes the relevant fiduciary relationship as one "with respect to a plan," and repeatedly identifies the "plan" as the victim of any fiduciary breach and the recipient of any relief. See *id.*, at 140. The legislative history likewise revealed that "the crucible of congressional concern was misuse and mismanagement of plan assets by plan administrators." *Id.*, at 141, n. 8. Finally, our review of ERISA as a whole confirmed that §§ 502(a)(2) and 409 protect "the financial integrity of the plan," *id.*, at 142, n. 9, whereas other provisions specifically address claims for benefits, see *id.*, at 143–144 (discussing §§ 502(a)(1)(B) and 503). We therefore concluded:

> "A fair contextual reading of the statute makes it abundantly clear that its draftsmen were primarily concerned with the possible misuse of plan assets, and with remedies that would protect the entire plan, rather than with the rights of an individual beneficiary." *Id.*, at 142.

Russell's emphasis on protecting the "entire plan" from fiduciary misconduct reflects the former landscape of employee benefit plans. That landscape has changed.

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propriate claims for "lost profits." See Brief for Respondents 12–13. Under the common law of trusts, which informs our interpretation of ERISA's fiduciary duties, see *Varity*, 516 U. S., at 496–497, trustees are "chargeable with . . . any profit which would have accrued to the trust estate if there had been no breach of trust," including profits forgone because the trustee "fails to purchase specific property which it is his duty to purchase." 1 Restatement (Second) of Trusts § 205, and Comment *i* (1957); § 211; see also 3 A. Scott, Law on Trusts §§ 205, 211 (3d ed. 1967).

Defined contribution plans dominate the retirement plan scene today.[5] In contrast, when ERISA was enacted, and when *Russell* was decided, "the [defined benefit] plan was the norm of American pension practice." J. Langbein, S. Stabile, & B. Wolk, Pension and Employee Benefit Law 58 (4th ed. 2006); see also Zelinsky, The Defined Contribution Paradigm, 114 Yale L. J. 451, 471 (2004) (discussing the "significant reversal of historic patterns under which the traditional defined benefit plan was the dominant paradigm for the provision of retirement income"). Unlike the defined contribution plan in this case, the disability plan at issue in *Russell* did not have individual accounts; it paid a fixed benefit based on a percentage of the employee's salary. See *Russell* v. *Massachusetts Mut. Life Ins. Co.*, 722 F. 2d 482, 486 (CA9 1983).

The "entire plan" language in *Russell* speaks to the impact of § 409 on plans that pay defined benefits. Misconduct by the administrators of a defined benefit plan will not affect an individual's entitlement to a defined benefit unless it creates or enhances the risk of default by the entire plan. It was that default risk that prompted Congress to require defined benefit plans (but not defined contribution plans) to satisfy complex minimum funding requirements, and to make premium payments to the Pension Benefit Guaranty Corporation for plan termination insurance. See Zelinsky, 114 Yale L. J., at 475–478.

For defined contribution plans, however, fiduciary misconduct need not threaten the solvency of the entire plan to

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[5] See, *e. g.*, D. Rajnes, An Evolving Pension System: Trends in Defined Benefit and Defined Contribution Plans, Employee Benefit Research Institute (EBRI) Issue Brief No. 249 (Sept. 2002), http://www.ebri.org/pdf/briefspdf/0902ib.pdf (all Internet materials as visited Jan. 28, 2008, and available in Clerk of Court's case file); Facts from EBRI: Retirement Trends in the United States Over the Past Quarter-Century (June 2007), http://www.ebri.org/pdf/publications/facts/0607fact.pdf.

reduce benefits below the amount that participants would otherwise receive. Whether a fiduciary breach diminishes plan assets payable to all participants and beneficiaries, or only to persons tied to particular individual accounts, it creates the kind of harms that concerned the draftsmen of § 409. Consequently, our references to the "entire plan" in *Russell*, which accurately reflect the operation of § 409 in the defined benefit context, are beside the point in the defined contribution context.

Other sections of ERISA confirm that the "entire plan" language from *Russell*, which appears nowhere in § 409 or § 502(a)(2), does not apply to defined contribution plans. Most significant is § 404(c), which exempts fiduciaries from liability for losses caused by participants' exercise of control over assets in their individual accounts. See also 29 CFR § 2550.404c–1 (2007). This provision would serve no real purpose if, as respondents argue, fiduciaries never had any liability for losses in an individual account.

We therefore hold that although § 502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries, that provision does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account. Accordingly, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.[6]

It is so ordered.

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[6] After our grant of certiorari respondents filed a motion to dismiss the writ, contending that the case is moot because petitioner is no longer a participant in the Plan. While his withdrawal of funds from the Plan may have relevance to the proceedings on remand, we denied their motion because the case is not moot. A plan "participant," as defined by § 3(7) of ERISA, 29 U. S. C. § 1002(7), may include a former employee with a colorable claim for benefits. See, *e. g.*, *Harzewski* v. *Guidant Corp.*, 489 F. 3d 799 (CA7 2007).

CHIEF JUSTICE ROBERTS, with whom JUSTICE KENNEDY joins, concurring in part and concurring in the judgment.

In the decision below, the Fourth Circuit concluded that the loss to LaRue's individual plan account did not permit him to "serve as a legitimate proxy for the plan in its entirety," thus barring him from relief under §502(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U. S. C. §1132(a)(2). 450 F. 3d 570, 574 (2006). The Court today rejects that reasoning. See *ante*, at 252, 255–256. I agree with the Court that the Fourth Circuit's analysis was flawed, and join the Court's opinion to that extent.

The Court, however, goes on to conclude that §502(a)(2) does authorize recovery in cases such as the present one. See *ante*, at 255–256. It is not at all clear that this is true. LaRue's right to direct the investment of his contributions was a right granted and governed by the plan. See *ante*, at 250–251. In this action, he seeks the benefits that would otherwise be due him if, as alleged, the plan carried out his investment instruction. LaRue's claim, therefore, is a claim for benefits that turns on the application and interpretation of the plan terms, specifically those governing investment options and how to exercise them.

It is at least arguable that a claim of this nature properly lies only under §502(a)(1)(B) of ERISA. That provision allows a plan participant or beneficiary "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U. S. C. §1132(a)(1)(B). It is difficult to imagine a more accurate description of LaRue's claim. And in fact claimants have filed suit under §502(a)(1)(B) alleging similar benefit denials in violation of plan terms. See, *e. g.*, *Hess* v. *Reg-Ellen Machine Tool Corp.*, 423 F. 3d 653, 657 (CA7 2005) (allegation made under §502(a)(1)(B) that a plan administrator wrong-

fully denied instruction to move retirement funds from employer's stock to a diversified investment account).

If LaRue may bring his claim under § 502(a)(1)(B), it is not clear that he may do so under § 502(a)(2) as well. Section 502(a)(2) provides for "appropriate" relief. Construing the same term in a parallel ERISA provision, we have held that relief is not "appropriate" under § 502(a)(3) if another provision, such as § 502(a)(1)(B), offers an adequate remedy. See *Varity Corp.* v. *Howe*, 516 U. S. 489, 515 (1996). Applying the same rationale to an interpretation of "appropriate" in § 502(a)(2) would accord with our usual preference for construing the "same terms [to] have the same meaning in different sections of the same statute," *Barnhill* v. *Johnson*, 503 U. S. 393, 406 (1992), and with the view that ERISA in particular is a "'comprehensive and reticulated statute'" with "carefully integrated civil enforcement provisions," *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134, 146 (1985) (quoting *Nachman Corp.* v. *Pension Benefit Guaranty Corporation*, 446 U. S. 359, 361 (1980)). In a variety of contexts, some Courts of Appeals have accordingly prevented plaintiffs from recasting what are in essence plan-derived benefit claims that should be brought under § 502(a)(1)(B) as claims for fiduciary breaches under § 502(a)(2). See, *e. g.*, *Coyne & Delany Co.* v. *Blue Cross & Blue Shield of Va., Inc.*, 102 F. 3d 712, 714 (CA4 1996). Other Courts of Appeals have disagreed with this approach. See, *e. g.*, *Graden* v. *Conexant Systems Inc.*, 496 F. 3d 291, 301 (CA3 2007).

The significance of the distinction between a § 502(a)(1)(B) claim and one under § 502(a)(2) is not merely a matter of picking the right provision to cite in the complaint. Allowing a § 502(a)(1)(B) action to be recast as one under § 502(a)(2) might permit plaintiffs to circumvent safeguards for plan administrators that have developed under § 502(a)(1)(B). Among these safeguards is the requirement, recognized by almost all the Courts of Appeals, see *Fallick* v. *Nationwide*

Mut. Ins. Co., 162 F. 3d 410, 418, n. 4 (CA6 1998) (citing cases), that a participant exhaust the administrative remedies mandated by ERISA §503, 29 U. S. C. §1133, before filing suit under §502(a)(1)(B).* Equally significant, this Court has held that ERISA plans may grant administrators and fiduciaries discretion in determining benefit eligibility and the meaning of plan terms, decisions that courts may review only for an abuse of discretion. *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U. S. 101, 115 (1989).

These safeguards encourage employers and others to undertake the voluntary step of providing medical and retirement benefits to plan participants, see *Aetna Health Inc.* v. *Davila*, 542 U. S. 200, 215 (2004), and have no doubt engendered substantial reliance interests on the part of plans and fiduciaries. Allowing what is really a claim for benefits under a plan to be brought as a claim for breach of fiduciary duty under §502(a)(2), rather than as a claim for benefits due "under the terms of the plan," §502(a)(1)(B), may result in circumventing such plan terms.

I do not mean to suggest that these are settled questions. They are not. Nor are we in a position to answer them. LaRue did not rely on §502(a)(1)(B) as a source of relief, and the courts below had no occasion to address the argument, raised by an *amicus* in this Court, that the availability of relief under §502(a)(1)(B) precludes LaRue's fiduciary breach claim. See Brief for ERISA Industry Committee as *Amicus Curiae* 13–30. I simply highlight the fact that the Court's determination that the present claim may be brought under §502(a)(2) is reached without considering whether the possible availability of relief under §502(a)(1)(B) alters that conclusion. See, *e. g.*, *United Parcel Service, Inc.* v. *Mitchell*, 451 U. S. 56, 60, n. 2 (1981) (noting general reluctance to consider arguments raised only by an *amicus* and not consid-

*Sensibly, the Court leaves open the question whether exhaustion may be required of a claimant who seeks recovery for a breach of fiduciary duty under §502(a)(2). See *ante*, at 253, n. 3.

ered by the courts below). In matters of statutory interpretation, where principles of *stare decisis* have their greatest effect, it is important that we not seem to decide more than we do. I see nothing in today's opinion precluding the lower courts on remand, if they determine that the argument is properly before them, from considering the contention that LaRue's claim may proceed only under §502(a)(1)(B). In any event, other courts in other cases remain free to consider what we have not—what effect the availability of relief under §502(a)(1)(B) may have on a plan participant's ability to proceed under §502(a)(2).

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, concurring in the judgment.

I agree with the Court that petitioner alleges a cognizable claim under §502(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U. S. C. §1132(a)(2), but it is ERISA's text and not "the kind of harms that concerned [ERISA's] draftsmen" that compels my decision. *Ante*, at 256. In *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134 (1985), the Court held that §409 of ERISA, 29 U. S. C. §1109, read together with §502(a)(2), authorizes recovery only by "the plan as an entity," 473 U. S., at 140, and does not permit individuals to bring suit when they do not seek relief on behalf of the plan, *id.*, at 139–144. The majority accepts *Russell*'s fundamental holding, but reins in the Court's further suggestion in *Russell* that suits under §502(a)(2) are meant to "protect the entire plan," rather than "the rights of an individual beneficiary." *Ante*, at 253–254 (internal quotation marks omitted); see *Russell*, *supra*, at 142. The majority states that emphasizing the "entire plan" was a sensible application of §§409 and 502(a)(2) in the historical context of defined benefit plans, but that the subsequent proliferation of defined contribution plans has rendered *Russell*'s dictum inapplicable to most modern cases.

Ante, at 255–256. In concluding that a loss suffered by a participant's defined contribution plan account because of a fiduciary breach "creates the kind of harms that concerned the draftsmen of § 409," the majority holds that § 502(a)(2) authorizes recovery for plan participants such as petitioner. *Ante*, at 256.

Although I agree with the majority's holding, I write separately because my reading of §§ 409 and 502(a)(2) is not contingent on trends in the pension plan market. Nor does it depend on the ostensible "concerns" of ERISA's drafters. Rather, my conclusion that petitioner has stated a cognizable claim flows from the unambiguous text of §§ 409 and 502(a)(2) as applied to defined contribution plans. Section 502(a)(2) states that "[a] civil action may be brought" by a plan "participant, beneficiary or fiduciary," or by the Secretary of Labor, to obtain "appropriate relief" under § 409. 29 U. S. C. § 1132(a)(2). Section 409(a) provides that "[a]ny person who is a fiduciary with respect to a *plan* . . . shall be personally liable to make good to such *plan* any losses to the *plan* resulting from each [fiduciary] breach, and to restore to such *plan* any profits of such fiduciary which have been made through use of assets of the *plan* by the fiduciary . . . ." 29 U. S. C. § 1109(a) (emphasis added).

The plain text of § 409(a), which uses the term "plan" five times, leaves no doubt that § 502(a)(2) authorizes recovery only for the plan. Likewise, Congress' repeated use of the word "any" in § 409(a) clarifies that the key factor is whether the alleged losses can be said to be losses "to the plan," not whether they are otherwise of a particular nature or kind. See, *e. g.*, *Ali* v. *Federal Bureau of Prisons*, *ante*, at 219 (noting that the natural reading of "any" is "one or some indiscriminately of whatever kind" (internal quotation marks omitted)). On their face, §§ 409(a) and 502(a)(2) permit recovery of *all* plan losses caused by a fiduciary breach.

The question presented here, then, is whether the losses to petitioner's individual 401(k) account resulting from respondents' alleged breach of their fiduciary duties were losses "to the plan." In my view they were, because the assets allocated to petitioner's individual account were plan assets. ERISA requires the assets of a defined contribution plan (including "gains and losses" and legal recoveries) to be allocated for bookkeeping purposes to individual accounts within the plan for the beneficial interest of the participants, whose benefits in turn depend on the allocated amounts. See 29 U. S. C. § 1002(34) (defining a "defined contribution plan" as a "plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account"). Thus, when a defined contribution plan sustains losses, those losses are reflected in the balances in the plan accounts of the affected participants, and a recovery of those losses would be allocated to one or more individual accounts.

The allocation of a plan's assets to individual accounts for bookkeeping purposes does not change the fact that all the assets in the plan remain plan assets. A defined contribution plan is not merely a collection of unrelated accounts. Rather, ERISA requires a plan's combined assets to be held in trust and legally owned by the plan trustees. See 29 U. S. C. § 1103(a) (providing that "all assets of an employee benefit plan shall be held in trust by one or more trustees"). In short, the assets of a defined contribution plan under ERISA constitute, at the very least, the sum of all the assets allocated for bookkeeping purposes to the participants' individual accounts. Because a defined contribution plan is essentially the sum of its parts, losses attributable to the account of an individual participant are necessarily "losses to

the plan" for purposes of § 409(a). Accordingly, when a participant sustains losses to his individual account as a result of a fiduciary breach, the plan's aggregate assets are likewise diminished by the same amount, and § 502(a)(2) permits that participant to recover such losses on behalf of the plan.*

*Of course, a participant suing to recover benefits on behalf of the plan is not entitled to monetary relief payable directly to him; rather, any recovery must be paid to the plan.

Syllabus

DANFORTH *v.* MINNESOTA

CERTIORARI TO THE SUPREME COURT OF MINNESOTA

No. 06–8273. Argued October 31, 2007—Decided February 20, 2008

After this Court announced a "new rule" for evaluating the reliability of testimonial statements in criminal cases, see *Crawford* v. *Washington*, 541 U. S. 36, 68–69, petitioner sought state postconviction relief, arguing that he was entitled to a new trial because admitting the victim's taped interview at his trial violated *Crawford*'s rule. The Minnesota trial and appeals courts concluded that *Crawford* did not apply retroactively under *Teague* v. *Lane*, 489 U. S. 288. The State Supreme Court agreed, and also concluded that state courts are not free to give a decision of this Court announcing a new constitutional rule of criminal procedure broader retroactive application than that given by this Court.

Held: Teague does not constrain the authority of state courts to give broader effect to new rules of criminal procedure than is required by that opinion. Pp. 269–291.

(a) *Crawford* announced a "new rule"—as defined by *Teague*—because its result "was not *dictated* by precedent existing at the time the defendant's conviction became final," *Teague*, 489 U. S., at 301 (plurality opinion). It was not, however, a rule "of [this Court's] own devising" or the product of its own views about sound policy, *Crawford*, 541 U. S., at 67. Pp. 269–271.

(b) The Court first adopted a "retroactivity" standard in *Linkletter* v. *Walker*, 381 U. S. 618, 629, but later rejected that standard for cases pending on direct review, *Griffith* v. *Kentucky*, 479 U. S. 314, and on federal habeas review, *Teague* v. *Lane*, 489 U. S. 288. Under *Teague*, new constitutional rules of criminal procedure may not be applied retroactively to cases on federal habeas review unless they place certain primary individual conduct beyond the States' power to proscribe or are "watershed" rules of criminal procedure. *Id.*, at 310 (plurality opinion). Pp. 271–275.

(c) Neither *Linkletter* nor *Teague* explicitly or implicitly constrained the States' authority to provide remedies for a broader range of constitutional violations than are redressable on federal habeas. And *Teague* makes clear that its rule was tailored to the federal habeas context and thus had no bearing on whether States could provide broader relief in their own postconviction proceedings. Nothing in Justice O'Connor's general nonretroactivity rule discussion in *Teague* asserts or even intimates that her definition of the class eligible for relief under a new rule

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should inhibit the authority of a state agency or state court to extend a new rule's benefit to a broader class than she defined. Her opinion also clearly indicates that *Teague*'s general nonretroactivity rule was an exercise of this Court's power to interpret the federal habeas statute. Since *Teague* is based on statutory authority that extends only to federal courts applying a federal statute, it cannot be read as imposing a binding obligation on state courts. The opinion's text and reasoning also illustrate that the rule was meant to apply only to federal courts considering habeas petitions challenging state-court criminal convictions. The federal interest in uniformity in the application of federal law does not outweigh the general principle that States are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees. The *Teague* rule was intended to limit federal courts' authority to overturn state convictions—not to limit a state court's authority to grant relief for violations of new constitutional law rules when reviewing its own State's convictions. Subsequent cases confirm this view. See, *e. g.*, *Beard* v. *Banks*, 542 U. S. 406, 412. Pp. 275–282.

(d) Neither *Michigan* v. *Payne*, 412 U. S. 47, nor *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167, cast doubt on the state courts' authority to provide broader remedies for federal constitutional violations than mandated by *Teague*. Pp. 282–288.

(e) No federal rule, either implicitly announced in *Teague*, or in some other source of federal law, prohibits States from giving broader retroactive effect to new rules of criminal procedure. Pp. 288–290.

718 N. W. 2d 451, reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which SCALIA, SOUTER, THOMAS, GINSBURG, BREYER, and ALITO, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 291.

Benjamin J. Butler argued the cause for petitioner. With him on the briefs was *Roy G. Spurbeck*.

Patrick C. Diamond argued the cause for respondent. With him on the brief were *Lori Swanson*, Attorney General of Minnesota, *Michael O. Freeman*, and *Jean Burdorf*.*

**Jeffrey A. Lamken* and *Pamela Harris* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

*[Footnote * is continued on p. 266]*

JUSTICE STEVENS delivered the opinion of the Court.

New constitutional rules announced by this Court that place certain kinds of primary individual conduct beyond the power of the States to proscribe, as well as "watershed" rules of criminal procedure, must be applied in all future trials, all cases pending on direct review, and all federal habeas corpus proceedings. All other new rules of criminal procedure must be applied in future trials and in cases pending on direct review, but may not provide the basis for a federal collateral attack on a state-court conviction. This is the substance of the "*Teague* rule" described by Justice O'Connor in her plurality opinion in *Teague* v. *Lane*, 489 U. S. 288 (1989).[1] The question in this case is whether *Teague* constrains the authority of state courts to give broader effect to new rules of criminal procedure than is required by that opinion. We have never suggested that it does, and now hold that it does not.

Talis J. Colberg, Attorney General of Alaska, and *Timothy W. Terrell*, Assistant Attorney General, filed a brief for the State of Alaska et al. as *amici curiae* urging affirmance.

Briefs of *amici curiae* were filed for the State of Kansas et al. by *Paul J. Morrison*, Attorney General of Kansas, *Stephen R. McAllister*, Solicitor General, and *Jared S. Maag*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Tom Miller* of Iowa, *Michael A. Cox* of Michigan, *W. A. Drew Edmondson* of Oklahoma, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, and *Robert F. McDonnell* of Virginia; and for the American Civil Liberties Union et al. by *Larry Yackle*, *Steven R. Shapiro*, and *John Holdridge*.

[1] Although *Teague* was a plurality opinion that drew support from only four Members of the Court, the *Teague* rule was affirmed and applied by a majority of the Court shortly thereafter. See *Penry* v. *Lynaugh*, 492 U. S. 302, 313 (1989) ("Because Penry is before us on collateral review, we must determine, as a threshold matter, whether granting him the relief he seeks would create a new rule. Under *Teague*, new rules will not be applied or announced in cases on collateral review unless they fall into one of two exceptions" (citation and internal quotation marks omitted)).

I

In 1996, a Minnesota jury found petitioner Stephen Danforth guilty of first-degree criminal sexual conduct with a minor. See Minn. Stat. §609.342, subd. 1(a) (1994). The 6-year-old victim did not testify at trial, but the jury saw and heard a videotaped interview of the child. On appeal from his conviction, Danforth argued that the tape's admission violated the Sixth Amendment's guarantee that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." Applying the rule of admissibility set forth in *Ohio* v. *Roberts*, 448 U. S. 56 (1980), the Minnesota Court of Appeals concluded that the tape "was sufficiently reliable to be admitted into evidence," and affirmed the conviction. *State* v. *Danforth*, 573 N. W. 2d 369, 375 (1997). The conviction became final in 1998 when the Minnesota Supreme Court denied review and petitioner's time for filing a writ of certiorari elapsed. See *Caspari* v. *Bohlen*, 510 U. S. 383, 390 (1994).

After petitioner's conviction had become final, we announced a "new rule" for evaluating the reliability of testimonial statements in criminal cases. In *Crawford* v. *Washington*, 541 U. S. 36, 68–69 (2004), we held that where testimonial statements are at issue, "the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation."

Shortly thereafter, petitioner filed a state postconviction petition, in which he argued that he was entitled to a new trial because the admission of the taped interview violated the rule announced in *Crawford*. Applying the standards set forth in *Teague*, the Minnesota trial court and the Minnesota Court of Appeals concluded that *Crawford* did not apply to petitioner's case. The State Supreme Court granted review to consider two arguments: (1) that the lower courts erred in holding that *Crawford* did not apply retroactively under *Teague;* and (2) that the state court was "free to apply

a broader retroactivity standard than that of *Teague*," and should apply the *Crawford* rule to petitioner's case even if federal law did not require it to do so. 718 N. W. 2d 451, 455 (2006). The court rejected both arguments. *Ibid.*

With respect to the second, the Minnesota court held that our decisions in *Michigan* v. *Payne*, 412 U. S. 47 (1973), *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167 (1990), and *Teague* itself establish that state courts are not free to give a Supreme Court decision announcing a new constitutional rule of criminal procedure broader retroactive application than that given by this Court.[2] The Minnesota court acknowledged that other state courts had held that *Teague* does not apply to state postconviction proceedings,[3] but concluded that "we are not free to fashion our own standard of retroactivity for *Crawford*." 718 N. W. 2d, at 455–457.

Our recent decision in *Whorton* v. *Bockting*, 549 U. S. 406 (2007), makes clear that the Minnesota court correctly concluded that federal law does not *require* state courts to apply the holding in *Crawford* to cases that were final when that case was decided. Nevertheless, we granted certiorari, 550

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[2]The relevant passage in the Minnesota Supreme Court opinion states:

"Danforth argues that *Teague* dictates the limits of retroactive application of new rules only in *federal* habeas corpus proceedings and does not limit the retroactive application of new rules in *state* postconviction proceedings. Danforth is incorrect when he asserts that state courts are free to give a Supreme Court decision of federal constitutional criminal procedure broader retroactive application than that given by the Supreme Court. . . . In light of *Payne* and *American Trucking Associations*, we cannot apply state retroactivity principles when determining the retroactivity of a new rule of federal constitutional criminal procedure if the Supreme Court has already provided relevant federal principles." 718 N. W. 2d 451, 456 (2006).

[3]See, *e. g.*, *Daniels* v. *State*, 561 N. E. 2d 487, 489 (Ind. 1990); *State ex rel. Taylor* v. *Whitley*, 606 So. 2d 1292, 1296–1297 (La. 1992); *State* v. *Whitfield*, 107 S. W. 3d 253, 266–268 (Mo. 2003); *Colwell* v. *State*, 118 Nev. 807, 816–819, 59 P. 3d 463, 470–471 (2002) *(per curiam)*; *Cowell* v. *Leapley*, 458 N. W. 2d 514, 517–518 (S. D. 1990).

U. S. 956 (2007), to consider whether *Teague* or any other federal rule of law *prohibits* them from doing so.[4]

II

We begin with a comment on the source of the "new rule" announced in *Crawford*. For much of our Nation's history, federal constitutional rights—such as the Sixth Amendment confrontation right at issue in *Crawford*—were not binding on the States. Federal law, in fact, imposed no constraints on the procedures that state courts could or should follow in imposing criminal sanctions on their citizens. Neither the Federal Constitution as originally ratified nor any of the Amendments added by the Bill of Rights in 1791 gave this Court or any other federal court power to review the fairness of state criminal procedures. Moreover, before 1867 the statutory authority of federal district courts to issue writs of habeas corpus did not extend to convicted criminals in state custody. See Act of Feb. 5, 1867, ch. 28, §1, 14 Stat. 385.

The ratification of the Fourteenth Amendment radically changed the federal courts' relationship with state courts. That Amendment, one of the post-Civil War Reconstruction Amendments ratified in 1868, is the source of this Court's power to decide whether a defendant in a state proceeding received a fair trial—*i. e.*, whether his deprivation of liberty was "without due process of law." U. S. Const., Amdt. 14, §1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law"). In construing that Amendment, we have held that it imposes minimum standards of fairness on the States, and requires state crimi-

[4] We note at the outset that this case does not present the questions whether States are required to apply "watershed" rules in state post-conviction proceedings, whether the *Teague* rule applies to cases brought under 28 U. S. C. §2255 (2000 ed. and Supp. V), or whether Congress can alter the rules of retroactivity by statute. Accordingly, we express no opinion on these issues.

nal trials to provide defendants with protections "implicit in the concept of ordered liberty." *Palko* v. *Connecticut*, 302 U. S. 319, 325 (1937).

Slowly at first, and then at an accelerating pace in the 1950's and 1960's, the Court held that safeguards afforded by the Bill of Rights—including a defendant's Sixth Amendment right "to be confronted with the witnesses against him"—are incorporated in the Due Process Clause of the Fourteenth Amendment and are therefore binding upon the States. See *Gideon* v. *Wainwright*, 372 U. S. 335 (1963) (applying the Sixth Amendment right to counsel to the States); *Pointer* v. *Texas*, 380 U. S. 400, 403 (1965) (holding that "the Sixth Amendment's right of an accused to confront the witnesses against him is likewise a fundamental right and is made obligatory on the States by the Fourteenth Amendment"). Our interpretation of that basic Sixth Amendment right of confrontation has evolved over the years.

In *Crawford* we accepted the petitioner's argument that the interpretation of the Sixth Amendment right to confrontation that we had previously endorsed in *Roberts*, 448 U. S. 56, needed reconsideration because it "stray[ed] from the original meaning of the Confrontation Clause." 541 U. S., at 42. We "turn[ed] to the historical background of the Clause to understand its meaning," *id.*, at 43, and relied primarily on legal developments that had occurred prior to the adoption of the Sixth Amendment to derive the correct interpretation, *id.*, at 43–50. We held that the "Constitution prescribes a procedure for determining the reliability of testimony in criminal trials, and we, no less than the state courts, lack authority to replace it with one of our own devising." *Id.*, at 67.

Thus, our opinion in *Crawford* announced a "new rule"—as that term is defined in *Teague*—because the result in that case "was not *dictated* by precedent existing at the time the defendant's conviction became final," *Teague*, 489 U. S., at 301 (plurality opinion). It was not, however, a rule "of our

own devising" or the product of our own views about sound policy.

III

Our decision today must also be understood against the backdrop of our somewhat confused and confusing "retroactivity" cases decided in the years between 1965 and 1987. Indeed, we note at the outset that the very word "retroactivity" is misleading because it speaks in temporal terms. "Retroactivity" suggests that when we declare that a new constitutional rule of criminal procedure is "nonretroactive," we are implying that the right at issue was not in existence prior to the date the "new rule" was announced. But this is incorrect. As we have already explained, the source of a "new rule" is the Constitution itself, not any judicial power to create new rules of law. Accordingly, the underlying right necessarily pre-exists our articulation of the new rule. What we are actually determining when we assess the "retroactivity" of a new rule is not the temporal scope of a newly announced right, but whether a violation of the right that occurred prior to the announcement of the new rule will entitle a criminal defendant to the relief sought.[5]

Originally, criminal defendants whose convictions were final were entitled to federal habeas relief only if the court that rendered the judgment under which they were in custody lacked jurisdiction to do so. *Ex parte Watkins*, 3 Pet. 193 (1830); *Ex parte Lange*, 18 Wall. 163, 176 (1874); *Ex parte*

[5] It may, therefore, make more sense to speak in terms of the "redressability" of violations of new rules, rather than the "retroactivity" of such rules. Cf. *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167, 201 (1990) (SCALIA, J., concurring in judgment) ("The very framing of the issue that we purport to decide today—whether our decision in [*American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S. 266 (1987),] shall 'apply' retroactively—presupposes [an incorrect] view of our decisions as *creating* the law, as opposed to *declaring* what the law already is"). Unfortunately, it would likely create, rather than alleviate, confusion to change our terminology at this point. Accordingly, we will continue to utilize the existing vocabulary, despite its shortcomings.

Siebold, 100 U. S. 371, 376–377 (1880).[6] In 1915, the realm of violations for which federal habeas relief would be available to state prisoners was expanded to include state proceedings that "deprive[d] the accused of his life or liberty without due process of law." *Frank* v. *Mangum*, 237 U. S. 309, 335. In the early 1900's, however, such relief was only granted when the constitutional violation was so serious that it effectively rendered the conviction void for lack of jurisdiction. See, *e. g.*, *Moore* v. *Dempsey*, 261 U. S. 86 (1923) (mob domination of a trial); *Mooney* v. *Holohan*, 294 U. S. 103 (1935) *(per curiam)* (knowing use of perjured testimony by the prosecution); *Waley* v. *Johnston*, 316 U. S. 101 (1942) *(per curiam)* (coerced guilty plea).[7]

The serial incorporation of the Amendments in the Bill of Rights during the 1950's and 1960's imposed more constitutional obligations on the States and created more opportunity for claims that individuals were being convicted without due process and held in violation of the Constitution. Nevertheless, until 1965 the Court continued to construe every constitutional error, including newly announced ones, as entitling state prisoners to relief on federal habeas. "New" constitutional rules of criminal procedure were, without discussion or analysis, routinely applied to cases on habeas review.

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[6] Although our post-1867 cases reflected a "softening" of the concept of jurisdiction to embrace claims that the statute under which the petitioner had been convicted was unconstitutional or that the detention was based on an illegally imposed sentence, the Court adhered to the basic rule that habeas was unavailable to review claims of constitutional error that did not go to the trial court's jurisdiction. See Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441, 471, 483–484 (1963); Hart, The Supreme Court 1958 Term, Foreword: The Time Chart of the Justices, 73 Harv. L. Rev. 84, 103–104 (1959).

[7] "[I]n *Waley* v. *Johnston*, 316 U. S. 101 (1942), the Court openly discarded the concept of jurisdiction—by then more [of] a fiction than anything else—as a touchstone of the availability of federal habeas review, and acknowledged that such review is available for claims of disregard of the constitutional rights of the accused . . . ." *Wainwright* v. *Sykes*, 433 U. S. 72, 79 (1977) (internal quotation marks omitted).

See, *e. g.*, *Jackson* v. *Denno*, 378 U. S. 368 (1964); *Gideon*, 372 U. S. 335; *Eskridge* v. *Washington Bd. of Prison Terms and Paroles*, 357 U. S. 214 (1958) *(per curiam)*.

In *Linkletter* v. *Walker*, 381 U. S. 618 (1965), the Court expressly considered the issue of "retroactivity" for the first time. Adopting a practical approach, we held that the retroactive effect of each new rule should be determined on a case-by-case basis by examining the purpose of the rule, the reliance of the States on the prior law, and the effect on the administration of justice of retroactive application of the rule. *Id.*, at 629. Applying those considerations to the exclusionary rule announced in *Mapp* v. *Ohio*, 367 U. S. 643 (1961), we held that the *Mapp* rule would not be given retroactive effect; it would not, in other words, be applied to convictions that were final before the date of the *Mapp* decision.[5] *Linkletter*, 381 U. S., at 636–640.

During the next four years, application of the *Linkletter* standard produced strikingly divergent results. As Justice Harlan pointed out in his classic dissent in *Desist* v. *United States*, 394 U. S. 244, 257 (1969), one new rule was applied to all cases subject to direct review, *Tehan* v. *United States ex rel. Shott*, 382 U. S. 406 (1966); another to all cases in which trials had not yet commenced, *Johnson* v. *New Jersey*, 384 U. S. 719 (1966); another to all cases in which tainted evi-

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[5] *Linkletter* arose in the context of a denial of federal habeas relief, so its holding was "necessarily limited to convictions which had become final by the time *Mapp* . . . [was] rendered." *Johnson* v. *New Jersey*, 384 U. S. 719, 732 (1966). We noted in *Linkletter* that *Mapp* was being applied to cases that were still pending on direct review at the time it was decided, so the issue before us was expressly limited to "whether the exclusionary principle enunciated in *Mapp* applies to state court convictions which had become final before rendition of our opinion." 381 U. S., at 622 (footnote omitted). Shortly thereafter, however, we held that the three-pronged *Linkletter* analysis should be applied both to convictions that were final before rendition of our opinions and to cases that were still pending on direct review. See *Johnson*, 384 U. S., at 732; *Stovall* v. *Denno*, 388 U. S. 293 (1967).

dence had not yet been introduced at trial, *Fuller* v. *Alaska*, 393 U. S. 80 (1968) *(per curiam);* and still others only to the party involved in the case in which the new rule was announced and to all future cases in which the proscribed official conduct had not yet occurred, *Stovall* v. *Denno*, 388 U. S. 293 (1967); *DeStefano* v. *Woods*, 392 U. S. 631 (1968) *(per curiam).* He reasonably questioned whether such decisions "may properly be considered the legitimate products of a court of law, rather than the commands of a superlegislature." 394 U. S., at 259.

Justice Harlan's dissent in *Desist*, buttressed by his even more searching separate opinion in *Mackey* v. *United States*, 401 U. S. 667, 675 (1971) (opinion concurring in judgments in part and dissenting in part), and scholarly criticism,[9] laid the groundwork for the eventual demise of the *Linkletter* standard. In *Griffith* v. *Kentucky*, 479 U. S. 314 (1987), the Court rejected as "unprincipled and inequitable" the application of the *Linkletter* standard to cases pending on direct review. In *Teague*, Justice O'Connor reaffirmed *Griffith*'s rejection of the *Linkletter* standard for determining the "retroactive" applicability of new rules to state convictions that were not yet final and rejected the *Linkletter* standard for cases pending on federal habeas review. She adopted (with a significant modification) the approach advocated by Justice Harlan for federal collateral review of final state judgments.

Justice O'Connor endorsed a general rule of nonretroactivity for cases on collateral review, stating that "[u]nless they fall within an exception to the general rule, new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced." 489 U. S., at 310 (plurality opinion). The opinion defined two exceptions: rules that render types of primary conduct "'beyond the power of the criminal lawmaking authority to proscribe,'" *id.*, at 311, and "watershed"

[9] See, *e. g.*, Haddad, "Retroactivity Should be Rethought": A Call for the End of the Linkletter Doctrine, 60 J. Crim. L., C. & P. S. 417 (1969).

rules that "implicate the fundamental fairness of the trial," *id.*, at 311, 312, 313.[10]

It is clear that *Linkletter* and then *Teague* considered what constitutional violations may be remedied on federal habeas.[11] They did not define the scope of the "new" constitutional rights themselves. Nor, as we shall explain, did *Linkletter* or *Teague* (or any of the other cases relied upon by respondent and the Minnesota Supreme Court) speak to the entirely separate question whether States can provide remedies for violations of these rights in their own postconviction proceedings.

IV

Neither *Linkletter* nor *Teague* explicitly or implicitly constrained the authority of the States to provide remedies for a broader range of constitutional violations than are redressable on federal habeas. *Linkletter* spoke in broad terms about the retroactive applicability of new rules to state convictions that had become final prior to our announcement of the rules. Although *Linkletter* arose on federal habeas, the opinion did not rely on that procedural posture as a factor in its holding or analysis. Arguably, therefore, the approach it established might have been applied with equal force to both federal and state courts reviewing final state convictions. But we did not state—and the state courts did not conclude—that *Linkletter* imposed such a limitation on the States.[12]

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[10] Rules of the former type "are more accurately characterized as substantive rules not subject to [*Teague*'s] bar." *Schriro* v. *Summerlin*, 542 U. S. 348, 352, n. 4 (2004).

[11] Similarly, *Johnson* and *Griffith* v. *Kentucky*, 479 U. S. 314 (1987), defined the scope of constitutional violations that would be remedied on direct appeal.

[12] The dissent is correct that at least one "thoughtful legal schola[r]" believed that *Linkletter* did preclude States from applying new constitutional rules more broadly than our cases required. *Post*, at 294 (citing Mishkin, Foreword: The High Court, The Great Writ, and the Due Process of Time and Law, 79 Harv. L. Rev. 56, 91, n. 132 (1965)). Notably, this

The Term after deciding *Linkletter*, we granted certiorari in *Johnson* to address the retroactivity of the rules announced in *Escobedo* v. *Illinois*, 378 U. S. 478 (1964), and *Miranda* v. *Arizona*, 384 U. S. 436 (1966). Applying the standard announced in *Linkletter*, we held that those rules should be applied only to trials that began after the respective dates of those decisions; they were given no retroactive effect beyond the parties in *Miranda* and *Escobedo* themselves.[13]

Notably, the Oregon Supreme Court decided to give retroactive effect to *Escobedo* despite our holding in *Johnson*. In *State* v. *Fair*, 263 Ore. 383, 502 P. 2d 1150 (1972), the Oregon court noted that it was continuing to apply *Escobedo* retroactively and correctly stated that "we are free to choose the degree of retroactivity or prospectivity which we believe appropriate to the particular rule under consideration, so long as we give federal constitutional rights at least as broad a scope as the United States Supreme Court requires." 263 Ore., at 387–388, 502 P. 2d, at 1152. In so holding, the Ore-

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comment was made in the context of an attack on *Linkletter*'s prospective approach as inconsistent with the idea that judges are "bound by a body of fixed, overriding law." Mishkin, 79 Harv. L. Rev., at 62. Moreover, the footnote cited by the dissent concludes with a statement that "the reservation to the states of the power to apply [new rules] to all convictions . . . is . . . the preferable pattern." *Id.*, at 91, n. 132. In all events, even if *Linkletter* and its progeny rested on the assumption that "new rules" of constitutional law did not exist until announced by this Court, that view of the law was rejected when we endorsed Justice Harlan's analysis of retroactivity.

[13] That same year, we similarly denied retroactive effect to the rule announced in *Griffin* v. *California*, 380 U. S. 609 (1965), prohibiting prosecutorial comment on the defendant's failure to testify. See *Tehan* v. *United States ex rel. Shott*, 382 U. S. 406 (1966). Shortly thereafter, in a case involving a *Griffin* error, we held for the first time that there are some constitutional errors that do not require the automatic reversal of a conviction. *Chapman* v. *California*, 386 U. S. 18, 22 (1967). Both *Shott* and *Chapman* protected the State of California from a potentially massive exodus of state prisoners because their prosecutors and judges had routinely commented on a defendant's failure to testify.

gon court cited our language in *Johnson* that "'States are still entirely free to effectuate under their own law stricter standards than those we have laid down and to apply those standards in a broader range of cases than is required by this decision.'" 263 Ore., at 386, 502 P. 2d, at 1151 (quoting *Johnson*, 384 U. S., at 733).[14]

Like *Linkletter*, *Teague* arose on federal habeas. Unlike in *Linkletter*, however, this procedural posture was not merely a background fact in *Teague*. A close reading of the *Teague* opinion makes clear that the rule it established was tailored to the unique context of federal habeas and therefore had no bearing on whether States could provide broader relief in their own postconviction proceedings than required by that opinion. Because the case before us now does not involve either of the "*Teague* exceptions," it is Justice O'Connor's discussion of the general rule of nonretroactivity that merits the following three comments.

First, not a word in Justice O'Connor's discussion—or in either of the opinions of Justice Harlan that provided the blueprint for her entire analysis—asserts or even intimates that her definition of the class eligible for relief under a new rule should inhibit the authority of any state agency or state

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[14] Although the plain meaning of this language in *Johnson* is that a State creating its own substantive standards can be as generous with their retroactive effect as it wishes, courts and commentators both before and after *Teague* v. *Lane*, 489 U. S. 288 (1989), cited this language in support of the proposition that state courts "may apply new constitutional standards 'in a broader range of cases than is required' by th[is] Court's decision not to apply the standards retroactively." *Colwell*, 118 Nev., at 818, 59 P. 3d, at 470–471; see also Stith, A Contrast of State and Federal Court Authority to Grant Habeas Relief, 38 Val. U. L. Rev. 421, 443 (2004). Thirty years after deciding *State* v. *Fair*, the Oregon Supreme Court "disavowed" this analysis based on our decisions in *Oregon* v. *Hass*, 420 U. S. 714 (1975), and *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167. *Page* v. *Palmateer*, 336 Ore. 379, 84 P. 3d 133 (2004). As we explain *infra*, at 288–289, its reliance on those cases was misplaced, and its decision to change course was therefore misguided.

court to extend the benefit of a new rule to a broader class than she defined.

Second, Justice O'Connor's opinion clearly indicates that *Teague*'s general rule of nonretroactivity was an exercise of this Court's power to interpret the federal habeas statute. Chapter 153 of Title 28 of the U. S. Code gives federal courts the authority to grant "writs of habeas corpus," but leaves unresolved many important questions about the scope of available relief. This Court has interpreted that congressional silence—along with the statute's command to dispose of habeas petitions "as law and justice require," 28 U. S. C. §2243—as an authorization to adjust the scope of the writ in accordance with equitable and prudential considerations. See, *e. g.*, *Brecht* v. *Abrahamson*, 507 U. S. 619 (1993) (harmless-error standard); *McCleskey* v. *Zant*, 499 U. S. 467 (1991) (abuse-of-the-writ bar to relief); *Wainwright* v. *Sykes*, 433 U. S. 72 (1977) (procedural default); *Stone* v. *Powell*, 428 U. S. 465 (1976) (cognizability of Fourth Amendment claims). *Teague* is plainly grounded in this authority, as the opinion expressly situated the rule it announced in this line of cases adjusting the scope of federal habeas relief in accordance with equitable and prudential considerations. 489 U. S., at 308 (plurality opinion) (citing, *inter alia*, *Wainwright* and *Stone*).[15] Since *Teague* is based on statutory authority that

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[15] Subsequent decisions have characterized *Teague* in a similar fashion. See, *e. g.*, *Brecht*, 507 U. S., at 633, 634 (stating that "in defining the scope of the writ, we look first to the considerations underlying our habeas jurisprudence," and identifying *Teague* as an example). And individual Justices have been even more explicit. See *Day* v. *McDonough*, 547 U. S. 198, 214 (2006) (SCALIA, J., dissenting) (describing, *inter alia*, the *Teague* rule as having been "created by the habeas courts themselves, in the exercise of their traditional equitable discretion . . . because [it was] seen as necessary to protect the interests of comity and finality that federal collateral review of state criminal proceedings necessarily implicates"); *Withrow* v. *Williams*, 507 U. S. 680, 699 (1993) (O'Connor, J., concurring in part

extends only to federal courts applying a federal statute, it cannot be read as imposing a binding obligation on state courts.

Third, the text and reasoning of Justice O'Connor's opinion also illustrate that the rule was meant to apply only to federal courts considering habeas corpus petitions challenging state-court criminal convictions. Justice O'Connor made numerous references to the "Great Writ" and the "writ," and expressly stated that "[t]he relevant frame of reference" for determining the appropriate retroactivity rule is defined by "the purposes for which the writ of habeas corpus is made available." 489 U. S., at 306 (plurality opinion). Moreover, she justified the general rule of nonretroactivity in part by reference to comity and respect for the finality of state convictions. Federalism and comity considerations are unique to *federal* habeas review of state convictions. See, *e. g.*, *State* v. *Preciose*, 129 N. J. 451, 475, 609 A. 2d 1280, 1292 (1992) (explaining that comity and federalism concerns "simply do not apply when this Court reviews procedural rulings by our lower courts"). If anything, considerations of comity

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and dissenting in part) (listing *Teague* as one illustration of the principle that "federal courts exercising their habeas powers may refuse to grant relief on certain claims because of 'prudential concerns' such as equity and federalism"); 507 U. S., at 718 (SCALIA, J., concurring in part and dissenting in part) (stating that *Teague* and other "gateways through which a habeas petitioner must pass before proceeding to the merits of a constitutional claim" are "grounded in the equitable discretion of habeas courts" (internal quotation marks and brackets omitted)); *Teague*, 489 U. S., at 317 (White, J., concurring in part and concurring in judgment) (characterizing *Teague* as a decision "construing the reach of the habeas corpus statutes" and contrasting it with *Griffith*, which "appear[s] to have constitutional underpinnings"); 489 U. S., at 332–333 (Brennan, J., dissenting) (characterizing *Teague* as an unwarranted change in "[this Court's] interpretation of the federal habeas statute"); see also *Mackey* v. *United States*, 401 U. S. 667, 684 (1971) (Harlan, J., concurring in judgments in part and dissenting in part) (describing the problem of retroactivity as "a problem as to the scope of the habeas writ").

militate in favor of allowing state courts to grant habeas relief to a broader class of individuals than is required by *Teague*. And while finality is, of course, implicated in the context of state as well as federal habeas, finality of state convictions is a *state* interest, not a federal one. It is a matter that States should be free to evaluate, and weigh the importance of, when prisoners held in state custody are seeking a remedy for a violation of federal rights by their lower courts.

The dissent correctly points out that *Teague* was also grounded in concerns over uniformity and the inequity inherent in the *Linkletter* approach. There is, of course, a federal interest in "reducing the inequity of haphazard retroactivity standards and disuniformity in the application of federal law." *Post*, at 301. This interest in uniformity, however, does not outweigh the general principle that States are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees. The fundamental interest in federalism that allows individual States to define crimes, punishments, rules of evidence, and rules of criminal and civil procedure in a variety of different ways—so long as they do not violate the Federal Constitution—is not otherwise limited by any general, undefined federal interest in uniformity. Nonuniformity is, in fact, an unavoidable reality in a federalist system of government. Any State could surely have adopted the rule of evidence defined in *Crawford* under state law even if that case had never been decided. It should be equally free to give its citizens the benefit of our rule in any fashion that does not offend federal law.

It is thus abundantly clear that the *Teague* rule of nonretroactivity was fashioned to achieve the goals of federal habeas while minimizing federal intrusion into state criminal proceedings. It was intended to limit the authority of federal courts to overturn state convictions—not to limit a state court's authority to grant relief for violations of new

rules of constitutional law when reviewing its own State's convictions.[16]

Our subsequent cases, which characterize the *Teague* rule as a standard limiting only the scope of *federal* habeas relief, confirm that *Teague* speaks only to the context of federal habeas. See, *e. g.*, *Beard* v. *Banks*, 542 U. S. 406, 412 (2004) ("*Teague*'s nonretroactivity principle acts as a limitation on the power of federal courts to grant habeas corpus relief to state prisoners" (internal quotation marks, ellipsis, and brackets omitted)); *Caspari*, 510 U. S., at 389 ("The *[Teague]* nonretroactivity principle *prevents* a federal court from granting habeas corpus relief to a state prisoner based on a rule announced after his conviction and sentence became final").

It is also noteworthy that for many years following *Teague*, state courts almost universally understood the *Teague* rule as binding only federal habeas courts, not state courts. See, *e. g.*, *Cowell* v. *Leapley*, 458 N. W. 2d 514 (S. D. 1990); *Preciose*, 129 N. J. 451, 609 A. 2d 1280; *State ex rel. Schmelzer* v. *Murphy*, 201 Wis. 2d 246, 256–257, 548 N. W. 2d 45, 49 (1996) (choosing of its own volition to adopt the *Teague* rule); but see *State* v. *Egelhoff*, 272 Mont. 114, 900 P. 2d 260 (1995).[17] Commentators were similarly confident that *Teague*'s "restrictions appl[ied] only to federal habeas

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[16] The lower federal courts have also applied the *Teague* rule to motions to vacate, set aside, or correct a federal sentence pursuant to 28 U. S. C. §2255 (2000 ed. and Supp. V). Much of the reasoning applicable to applications for writs of habeas corpus filed pursuant to §2254 seems equally applicable in the context of §2255 motions. See *United States* v. *Hayman*, 342 U. S. 205 (1952) (explaining that §2255 was enacted as a functional equivalent for habeas corpus to allow federal prisoners to bring a collateral attack in the court that imposed the sentence rather than a court that happened to be near the prison).

[17] Today, the majority of state courts still read *Teague* this way. As far as we can tell, only three States—Minnesota, Oregon, and Montana—have adopted a contrary view. See *Page*, 336 Ore. 379, 84 P. 3d 133; *Egelhoff*, 272 Mont. 114, 900 P. 2d 260.

cases," leaving States free to "determine whether to follow the federal courts' rulings on retroactivity or to fashion rules which respond to the unique concerns of that state." Hutton, Retroactivity in the States: The Impact of *Teague* v. *Lane* on State Postconviction Remedies, 44 Ala. L. Rev. 421, 423–424, 422–423 (1993).

In sum, the *Teague* decision limits the kinds of constitutional violations that will entitle an individual to relief on federal habeas, but does not in any way limit the authority of a state court, when reviewing its own state criminal convictions, to provide a remedy for a violation that is deemed "nonretroactive" under *Teague*.

V

The State contends that two of our prior decisions—*Michigan* v. *Payne* and *American Trucking Assns., Inc.* v. *Smith*—cast doubt on state courts' authority to provide broader remedies for federal constitutional violations than mandated by *Teague*. We disagree.

A

In *Michigan* v. *Payne*, 412 U. S. 47, we considered the retroactivity of the rule prohibiting "vindictive" resentencing that had been announced in our opinion in *North Carolina* v. *Pearce*, 395 U. S. 711, 723–726 (1969).[18] Relying on the

[18] In *Pearce*, we held:

"[W]henever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear. Those reasons must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. And the factual data upon which the increased sentence is based must be made part of the record, so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal." 395 U. S., at 726.

As the concurrence pointed out, some States already provided equivalent or broader protection against vindictive sentencing. See *id.*, at 733–734, n. 4 (opinion of Douglas, J.).

approach set forth in *Linkletter* and *Stovall*, we held that the *Pearce* rule did not apply because Payne's resentencing had occurred prior to *Pearce*'s date of decision.[19] We therefore reversed the judgment of the Michigan Supreme Court, which had applied *Pearce* retroactively, and remanded for further proceedings.

At first blush the fact that we reversed the judgment of the Michigan court appears to lend support to the view that state courts may not give greater retroactive effect to new rules announced by this Court than we expressly authorize. But, as our opinion in *Payne* noted, the Michigan Supreme Court had applied the *Pearce* rule retroactively "'pending clarification'" by this Court. 412 U. S., at 49. As the Michigan court explained, it had applied the new rule in the case before it in order to give guidance to Michigan trial courts concerning what it regarded as an ambiguity in *Pearce*'s new rule.[20] The Michigan court did not purport to make a defin-

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[19] Given the fact that Payne's appeal was still pending on that date, however, the result would have been different and the views of the dissenting Justices would have prevailed if the case had been decided after our decision in *Teague*.

[20] The relevant footnote in the Michigan Supreme Court's opinion explained:

"The United States Supreme Court has not yet decided whether *Pearce* is to be applied retroactively. Although the Court twice granted certiorari to consider the question, in each case the writ was subsequently dismissed as improvidently granted. *Moon* v. *Maryland*, *cert granted* (1969), 395 US 975 . . . , *writ dismissed* (1970), 398 US 319 . . . ; *Odom* v. *United States*, *cert granted* (1970), 399 US 904 . . . , *writ dismissed* (1970), 400 US 23 . . . . We decline to predict the high Court's answer to the question of *Pearce's* retroactive or prospective application, but we will apply *Pearce* in the present case in order to instruct our trial courts as to the Michigan interpretation of an ambiguous portion of *Pearce*, discussed *Infra*, pending clarification by the United States Supreme Court." *People* v. *Payne*, 386 Mich. 84, 90–91, n. 3, 191 N. W. 2d 375, 378, n. 2 (1971). See also Reply Brief for Petitioner in *Michigan* v. *Payne*, O. T. 1972, No. 71–1005, p. 4 ("*People* v *Payne*, 386 Mich 84, 191 NW 2d 375 (1971) expressly withheld

itive ruling on the retroactivity of *Pearce;* nor did it purport to apply a broader state rule of retroactivity than required by federal law. Our opinion in *Payne* did not require the Michigan Supreme Court to modify its disposition of the case; it simply remanded for further proceedings after providing the clarification that the Michigan court sought. Most significantly, other than the fact that the case was remanded for further proceedings, not a word in our *Payne* opinion suggests that the Court intended to prohibit state courts from applying new constitutional standards in a broader range of cases than we require.[21]

Notably, at least some state courts continued, after *Payne*, to adopt and apply broader standards of retroactivity than required by our decisions. In *Commonwealth* v. *McCormick*, 359 Pa. Super. 461, 470, 519 A. 2d 442, 447 (1986), for example, the Superior Court of Pennsylvania chose not to follow this Court's nonretroactivity holding in *Allen* v. *Hardy*, 478 U. S. 255 (1986) *(per curiam)*. The Pennsylvania court correctly explained that our decision was "not binding authority [in part] because neither the federal nor the state constitution dictate which decisions must be given retroactive effect." 359 Pa. Super., at 470, 519 A. 2d, at 447.

B

In *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167, petitioners challenged the constitutionality of an Arkansas statute enacted in 1983 that imposed a discriminatory burden on interstate truckers. While their suit was pending,

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ruling on the retroactivity of *Pearce* but applied it to *Payne* to instruct the lower courts in Michigan").

[21] See *American Trucking Assns., Inc.* v. *Smith*, 496 U. S., at 210, n. 4 (STEVENS, J., dissenting) ("*Payne* does not stand for the expansive proposition that federal law limits the relief a State may provide, but only for the more narrow proposition that a state court's decision that a particular remedy is constitutionally required is itself a federal question").

this Court declared a virtually identical Pennsylvania tax unconstitutional. See *American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S. 266 (1987). Shortly thereafter, the Arkansas Supreme Court struck down the Arkansas tax at issue. The primary issue in *Smith* was whether petitioners were entitled to a refund of taxes that were assessed before the date of our decision in *Scheiner*.

The Arkansas court held that petitioners were not entitled to a refund because our decision in *Scheiner* did not apply retroactively. Four Members of this Court agreed. The plurality opinion concluded that federal law did not provide petitioners with a right to a refund of pre-*Scheiner* tax payments because *Scheiner* did not apply retroactively to invalidate the Arkansas tax prior to its date of decision. Four Members of this Court dissented. The dissenting opinion argued that the case actually raised both the substantive question whether the tax violated the Commerce Clause of the Federal Constitution and the remedial question whether, if so, petitioners were entitled to a refund. The dissent concluded as a matter of federal law that the tax was invalid during the years before *Scheiner*, and that petitioners were entitled to a decision to that effect. Whether petitioners should get a refund, however, the dissent deemed a mixed question of state and federal law that should be decided by the state court in the first instance.

JUSTICE SCALIA concurred with the plurality's judgment because he disagreed with the substantive rule announced in *Scheiner*, but he did not agree with the plurality's reasoning. After stating that his views on retroactivity diverged from the plurality's "in a fundamental way," JUSTICE SCALIA explained:

> "I share [the dissent's] perception that prospective decisionmaking is incompatible with the judicial role, which is to say what the law is, not to prescribe what [the law] shall be. The very framing of the issue that

> we purport to decide today—whether our decision in *Scheiner* shall 'apply' retroactively—presupposes a view of our decisions as *creating* the law, as opposed to *declaring* what the law already is. Such a view is contrary to that understanding of 'the judicial Power,' U. S. Const., Art. III, § 1, which is not only the common and traditional one, but which is the only one that can justify courts in denying force and effect to the unconstitutional enactments of duly elected legislatures, see *Marbury* v. *Madison*, 1 Cranch 137 (1803)—the very exercise of judicial power asserted in *Scheiner*. To hold a governmental Act to be unconstitutional is not to announce that *we* forbid it, but that the *Constitution* forbids it; and when, as in this case, the constitutionality of a state statute is placed in issue, the question is not whether some decision of ours 'applies' in the way that a law applies; the question is whether the Constitution, as interpreted in that decision, invalidates the statute. Since the Constitution does not change from year to year; since it does not conform to our decisions, but our decisions are supposed to conform to it; the notion that our interpretation of the Constitution in a particular decision could take prospective form does not make sense. Either enforcement of the statute at issue in *Scheiner* (which occurred before our decision there) was unconstitutional, or it was not; if it was, then so is enforcement of all identical statutes in other States, whether occurring before or after our decision; and if it was not, then *Scheiner* was wrong, and the issue of whether to 'apply' that decision needs no further attention." *American Trucking Assns., Inc.* v. *Smith*, 496 U. S., at 201.

Because JUSTICE SCALIA's vote rested on his disagreement with the substantive rule announced in *Scheiner*—rather than with the retroactivity analysis in the dissenting opin-

ion—there were actually five votes supporting the dissent's views on the retroactivity issue. Accordingly, it is the dissent rather than the plurality that should inform our analysis of the issue before us today.[22]

Moreover, several years later, a majority of this Court explicitly adopted the *Smith* dissent's reasoning in *Harper* v. *Virginia Dept. of Taxation*, 509 U. S. 86 (1993). *Harper*, like *Smith*, involved a request for a refund of taxes paid before we declared a similar Michigan tax unconstitutional. We held that the Virginia tax at issue in *Harper* was in fact invalid—even before we declared the similar tax unconstitutional—but that this did not necessarily entitle petitioners to a full refund. We explained that the Constitution required Virginia to "'provide relief consistent with federal due process principles,'" 509 U. S., at 100 (quoting *American Trucking Assns., Inc.* v. *Smith*, 496 U. S., at 181 (plurality opinion)), but that "'a State found to have imposed an impermissibly discriminatory tax retains flexibility in responding to this determination'" under the Due Process Clause, 509 U. S., at 100 (quoting *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18, 39–40 (1990)). We left to the "Virginia courts this question of state law and the performance of other tasks pertaining to the crafting of any appropriate remedy." 509 U. S., at 102. And we specifically noted that Virginia "'is free to choose which form of relief it will provide, so long as that relief satisfies the minimum federal requirements we have outlined.'" *Ibid.* (quoting *McKesson*, 496 U. S., at 51–52); see also 509 U. S., at 102 ("State law may provide relief beyond the demands of federal due process, but under no circumstances may it confine petitioners to a lesser remedy" (citation omitted)).

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[22] While the opinions discussed at great length our earlier cases raising retroactivity issues, none of them suggested that federal law would prohibit Arkansas from refunding the taxes at issue if it wanted to do so.

Thus, to the extent that these civil retroactivity decisions are relevant to the issue before us today,[23] they support our conclusion that the remedy a state court chooses to provide its citizens for violations of the Federal Constitution is primarily a question of state law. Federal law simply "sets certain minimum requirements that States must meet but may exceed in providing appropriate relief." *American Trucking Assns., Inc.* v. *Smith*, 496 U. S., at 178–179 (plurality opinion). They provide no support for the proposition that federal law places a limit on state authority to provide remedies for federal constitutional violations.

VI

Finally, while the State acknowledges that it may grant its citizens broader protection than the Federal Constitution requires by enacting appropriate legislation or by judicial interpretation of its own Constitution, it argues that it may not do so by judicial misconstruction of federal law. *Oregon* v. *Hass*, 420 U. S. 714 (1975)—like our early decisions in *Ableman* v. *Booth*, 21 How. 506 (1859), and *Tarble's Case*, 13 Wall. 397 (1872)—provides solid support for that proposition. But

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[23] The petitioners and the dissenters in *American Trucking Assns., Inc.* v. *Smith* relied heavily on separate opinions authored by Justice Harlan, and on the Court's then-recent opinion in *Griffith*, 479 U. S. 314, supporting the proposition that a new constitutional holding should be applied not only in cases that had not yet been tried, but also in all cases still pending on direct review. The plurality, however, declined to follow *Griffith* because of its view that "there are important distinctions between the retroactive application of civil and criminal decisions that make the *Griffith* rationale far less compelling in the civil sphere." 496 U. S., at 197. While Justice Harlan would probably disagree with the suggestion that the distinction between civil and criminal cases provided an acceptable basis for refusing to follow *Griffith* in the *American Trucking Assns., Inc.* v. *Smith* litigation, see *Mackey*, 401 U. S., at 683, n. 2 (Harlan, J., concurring in judgments in part and dissenting in part), if relevant, that same distinction would make it appropriate to disregard the plurality's opinion in *American Trucking Assns., Inc.* v. *Smith* in this case.

the States that give broader retroactive effect to this Court's new rules of criminal procedure do not do so by misconstruing the federal *Teague* standard. Rather, they have developed *state* law to govern retroactivity in state postconviction proceedings. See, *e. g.*, *State* v. *Whitfield*, 107 S. W. 3d 253, 268 (Mo. 2003) ("[A]s a matter of state law, this Court chooses not to adopt the *Teague* analysis . . . "). The issue in this case is whether there is a federal rule, either implicitly announced in *Teague*, or in some other source of federal law, that prohibits them from doing so.

The absence of any precedent for the claim that *Teague* limits state collateral review courts' authority to provide remedies for federal constitutional violations is a sufficient reason for concluding that there is no such rule of federal law. That conclusion is confirmed by several additional considerations. First, if there is such a federal rule of law, presumably the Supremacy Clause in Article V of the Federal Constitution would require all state entities—not just state judges—to comply with it. We have held that States can waive a *Teague* defense, during the course of litigation, by expressly choosing not to rely on it, see *Collins* v. *Youngblood*, 497 U. S. 37, 41 (1990), or by failing to raise it in a timely manner, see *Schiro* v. *Farley*, 510 U. S. 222, 228–229 (1994). It would indeed be anomalous to hold that state legislatures and executives are not bound by *Teague*, but that state courts are.

Second, the State has not identified, and we cannot discern, the source of our authority to promulgate such a novel rule of federal law. While we have ample authority to control the administration of justice in the federal courts—particularly in their enforcement of federal legislation—we have no comparable supervisory authority over the work of state judges. *Johnson* v. *Fankell*, 520 U. S. 911 (1997). And while there are federal interests that occasionally justify this

Court's development of common-law rules of federal law,[24] our normal role is to interpret law created by others and "not to prescribe what it shall be." *American Trucking Assns., Inc.* v. *Smith*, 496 U. S., at 201 (SCALIA, J., concurring in judgment). Just as constitutional doubt may tip the scales in favor of one construction of a statute rather than another, so does uncertainty about the source of authority to impose a federal limit on the power of state judges to remedy wrongful state convictions outweigh any possible policy arguments favoring the rule that respondent espouses.

Finally, the dissent contends that the "end result [of this opinion] is startling" because "two criminal defendants, each of whom committed the same crime, at the same time, whose convictions became final on the same day, and each of whom raised an identical claim at the same time under the Federal Constitution" could obtain different results. *Post*, at 292. This assertion ignores the fact that the two hypothetical criminal defendants did not actually commit the "same crime." They violated different state laws, were tried in and by different state sovereigns, and may—for many reasons—be subject to different penalties. As previously noted, such nonuniformity is a necessary consequence of a federalist system of government.

VII

It is important to keep in mind that our jurisprudence concerning the "retroactivity" of "new rules" of constitutional law is primarily concerned, not with the question whether a

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[24] See *Boyle* v. *United Technologies Corp.*, 487 U. S. 500, 504 (1988) ("[W]e have held that a few areas, involving 'uniquely federal interests,' are so committed by the Constitution and laws of the United States to federal control that state law is pre-empted and replaced, where necessary, by federal law of a content prescribed . . . by the courts—so-called 'federal common law'" (citation omitted)); *United States* v. *Kimbell Foods, Inc.*, 440 U. S. 715 (1979); *Banco Nacional de Cuba* v. *Sabbatino*, 376 U. S. 398 (1964).

constitutional violation occurred, but with the availability or nonavailability of remedies. The former is a "pure question of federal law, our resolution of which should be applied uniformly throughout the Nation, while the latter is a mixed question of state and federal law." *American Trucking Assns., Inc.* v. *Smith*, 496 U. S., at 205 (STEVENS, J., dissenting).

A decision by this Court that a new rule does not apply retroactively under *Teague* does not imply that there was no right and thus no violation of that right at the time of trial—only that no remedy will be provided in federal habeas courts. It is fully consistent with a government of laws to recognize that the finality of a judgment may bar relief. It would be quite wrong to assume, however, that the question whether constitutional violations occurred in trials conducted before a certain date depends on how much time was required to complete the appellate process.

Accordingly, the judgment of the Supreme Court of Minnesota is reversed, and the case is remanded for further proceedings not inconsistent with this opinion. As was true in *Michigan* v. *Payne*, the Minnesota court is free to reinstate its judgment disposing of the petition for state postconviction relief.

It is so ordered.

CHIEF JUSTICE ROBERTS, with whom JUSTICE KENNEDY joins, dissenting.

Some of our new rulings on the meaning of the United States Constitution apply retroactively—to cases already concluded—and some do not. This Court has held that the question whether a particular ruling is retroactive is itself a question of federal law. It is basic that when it comes to any such question of federal law, it is "the province and duty" of this Court "to say what the law is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). State courts are the final arbiters of their own state law; this Court is the final arbiter

of federal law. State courts are therefore bound by our rulings on whether our cases construing federal law are retroactive.

The majority contravenes these bedrock propositions. The end result is startling: Of two criminal defendants, each of whom committed the same crime, at the same time, whose convictions became final on the same day, and each of whom raised an identical claim at the same time under the Federal Constitution, one may be executed while the other is set free—the first despite being correct on his claim, and the second because of it. That result is contrary to the Supremacy Clause and the Framers' decision to vest in "one supreme Court" the responsibility and authority to ensure the uniformity of federal law. Because the Constitution requires us to be more jealous of that responsibility and authority, I respectfully dissent.

I

One year after *Teague* v. *Lane*, 489 U. S. 288 (1989)—our leading modern precedent on retroactivity—*Teague*'s author explained:

> "The determination whether a constitutional decision of this Court is retroactive . . . is a matter of federal law. When questions of state law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions. The retroactive applicability of a constitutional decision of this Court, however, 'is every bit as much of a federal question as what particular federal constitutional provisions themselves mean, what they guarantee, and whether they have been denied.'" *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167, 177–178 (1990) (plurality opinion of O'Connor, J.) (quoting *Chapman* v. *California*, 386 U. S. 18, 21 (1967); citation omitted).

For that reason, "we have consistently required that state courts adhere to our retroactivity decisions." *American*

Trucking, *supra*, at 178 (citing *Michigan* v. *Payne*, 412 U. S. 47 (1973), and *Arsenault* v. *Massachusetts*, 393 U. S. 5 (1968) (*per curiam*)). Even more recently, we held that the "Supremacy Clause does not allow federal retroactivity doctrine to be supplanted by the invocation of a contrary approach to retroactivity under state law." *Harper* v. *Virginia Dept. of Taxation*, 509 U. S. 86, 100 (1993) (citation omitted).

Indeed, about the only point on which our retroactivity jurisprudence has been consistent is that the retroactivity of new federal rules is a question of federal law binding on States. The Court's contrary holding is based on a misreading of our precedent and a misunderstanding of the nature of retroactivity generally.

A

As the Court correctly points out, before 1965 we took for granted the proposition that all federal constitutional rights, including rights that represented a break from earlier precedent, would be given full retroactive effect on both direct and collateral review. That all changed with *Linkletter* v. *Walker*, 381 U. S. 618 (1965). In that case, a Louisiana prisoner brought a federal habeas petition arguing that illegally seized evidence was introduced against him at trial in violation of *Mapp* v. *Ohio*, 367 U. S. 643 (1961). *Mapp*, however, had been decided after his conviction became final. We granted certiorari to decide whether the *Mapp* rule "operates retrospectively upon cases finally decided in the period prior to *Mapp*." 381 U. S., at 619–620. In answering this question, we broke from our past practice of assuming full retroactivity, holding that "we are neither required to apply, nor prohibited from applying, a decision retrospectively." *Id.*, at 629. Our analysis turned entirely on the nature and scope of the particular constitutional right at issue: "[W]e must . . . weigh the merits and demerits [of retroactive application] in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." *Ibid.*

Under this framework, we held that *Mapp* would apply only prospectively. 381 U. S., at 639–640.

The next year, we decided *Johnson* v. *New Jersey*, 384 U. S. 719 (1966). *Johnson* was a direct appeal from the New Jersey Supreme Court's denial of *state* collateral relief. The precise question in *Johnson* was whether the rules announced in *Escobedo* v. *Illinois*, 378 U. S. 478 (1964), and *Miranda* v. *Arizona*, 384 U. S. 436 (1966), would apply to state prisoners whose convictions had become final before those cases were decided. In holding that *Escobedo* and *Miranda* should apply only prospectively, 384 U. S., at 732, we imported *Linkletter*'s mode of retroactivity analysis into review of state postconviction proceedings, 384 U. S., at 726–727. Finally, in *Stovall* v. *Denno*, 388 U. S. 293 (1967), we announced that, for purposes of retroactivity analysis, "no distinction is justified between convictions now final, as in the instant case, and convictions at various stages of trial and direct review." *Id.*, at 300.

Thus, by 1967, the *Linkletter* analysis was applied in review of criminal convictions, whether final or not. No matter at what stage of proceedings this Court considered a retroactivity question, the issue was decided with reference to the purposes and practical impact of the precise federal right in question: "Each constitutional rule of criminal procedure has its own distinct functions, its own background of precedent, and its own impact on the administration of justice, and the way in which these factors combine [to decide the retroactivity issue] must inevitably vary with the [constitutional] dictate involved." *Johnson*, *supra*, at 728.

Because the question of retroactivity was so tied up with the nature and purpose of the underlying federal constitutional right, it would have been surprising if any of our cases had suggested that States were free to apply new rules of federal constitutional law retroactively even when we would not. As one of the more thoughtful legal scholars put it in discussing the effect of the *Linkletter* analysis on state col-

lateral review, "[i]f a state gave relief in such a case on the exclusive authority of *Mapp*, under the rationale of the *Linkletter* opinion it would presumably have to be reversed." Mishkin, Foreword: The High Court, The Great Writ, and the Due Process of Time and Law, 79 Harv. L. Rev. 56, 91, n. 132 (1965).

Our precedents made clear that States could give greater substantive protection under their own laws than was available under federal law, and could give whatever retroactive effect to *those* laws they wished. As the Court explained in *Johnson*, "[o]f course, States are still entirely free to effectuate under their own law stricter standards than those we have laid down and to apply those standards in a broader range of cases than is required by this decision." 384 U. S., at 733. The clear implication of this statement was that States could apply their own retroactivity rules only to new substantive rights "under their own law," not to new federal rules announced by this Court.

Thus, contrary to the Court's view, our early retroactivity cases nowhere suggested that the retroactivity of new federal constitutional rules of criminal procedure was anything other than "a matter of federal law." *Daniel* v. *Louisiana*, 420 U. S. 31, 32 (1975) (*per curiam*.) It is no surprise, then, that when we held that a particular right would not apply retroactively, the language in our opinions did not indicate that our decisions were optional. See, *e. g.*, *Fuller* v. *Alaska*, 393 U. S. 80, 81 (1968) (*per curiam*) (the rule announced in *Lee* v. *Florida*, 392 U. S. 378 (1968), "*is to be applied* only to trials in which the evidence is sought to be introduced after the date of [that] decision" (emphasis added)). And, of course, when we found that a state court erred in holding that a particular right should not apply retroactively, the state court was bound to comply. See, *e. g.*, *Kitchens* v. *Smith*, 401 U. S. 847 (1971) (*per curiam*); *McConnell* v. *Rhay*, 393 U. S. 2, 3–4 (1968) (*per curiam*); *Arsenault*, *supra*, at 6.

Although nothing in our decisions suggested that state courts could determine the retroactivity of new federal rules according to their own lights, we had no opportunity to confront the issue head on until *Payne*, 412 U. S. 47.[1] In *Payne*, the defendant had argued before the Michigan Supreme Court that his resentencing violated the rule we had announced in *North Carolina* v. *Pearce*, 395 U. S. 711 (1969). In considering this question, the state court noted that this Court had "not yet decided whether *Pearce* is to be applied retroactively." *People* v. *Payne*, 386 Mich. 84, 90, n. 3, 191 N. W. 2d 375, 378, n. 2 (1971). Nevertheless, without so much as citing any federal retroactivity precedent, the court decided that it would "apply *Pearce* in the present case in order to instruct our trial courts as to the Michigan interpretation of an ambiguous portion of *Pearce* . . . , pending clarification by the United States Supreme Court." *Id.*, at 91, n. 3, 191 N. W. 2d, at 378, n. 2.

We granted certiorari in *Payne* only on the question of retroactivity, and decided that *Pearce* should not apply retroactively. In reversing the contrary decision of the state court, our language was not equivocal: "Since the resentencing hearing in this case took place approximately two years before *Pearce* was decided, we hold that the Michigan Supreme Court erred in applying its proscriptions here." 412 U. S., at 57.

The majority argues that *Payne* did not preclude States from applying retroactivity rules different from those we announced; rather, the argument goes, the Michigan Supreme Court simply elected to follow the federal retroactivity rule, "pending clarification." See *ante*, at 282–284. That is certainly a possible reading of *Payne*, but not the most plausible one. The Michigan Supreme Court did not purport to rest its decision to apply *Pearce* retroactively on the federal

[1] *Payne* came to us on direct appeal, but as noted, *supra*, at 294, we did not at the time distinguish between direct appeal and collateral review for purposes of retroactivity.

Linkletter analysis, and this Court's reversal is most reasonably read as *requiring* state courts to apply our federal retroactivity decisions. Notably, this is not the first time Members of this Court have debated the meaning of *Payne*, with *Teague*'s author explaining that *Payne* supports the proposition that "we have consistently required that state courts adhere to our retroactivity decisions," *American Trucking*, 496 U. S., at 178 (plurality opinion of O'Connor, J.), and the author of today's opinion disagreeing in dissent, see *id.*, at 210, n. 4 (opinion of STEVENS, J.). But whichever way *Payne* is read, it either offers no support for the majority's position, because the state court simply applied federal retroactivity rules, or flatly rejects the majority's position, because the state court failed to apply federal retroactivity rules, and was told by this Court that it must.

Meanwhile, Justice Harlan had begun dissenting in our retroactivity cases, pressing the view that new rules announced by the Court should be applied in all cases not yet final, without regard to the analysis set forth in *Linkletter*. See *Desist* v. *United States*, 394 U. S. 244, 256–269 (1969); *Mackey* v. *United States*, 401 U. S. 667, 675–702 (1971) (opinion concurring in judgments in part and dissenting in part). In *Griffith* v. *Kentucky*, 479 U. S. 314 (1987), we abandoned *Linkletter* as it applied to cases still on direct review and adopted Justice Harlan's view in such cases. Noting that nonretroactivity on direct appeal "violates basic norms of constitutional adjudication" and that "selective application of new rules violates the principle of treating similarly situated defendants the same," 479 U. S., at 322, 323, we held that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, *state or federal*, pending on direct review or not yet final," *id.*, at 328 (emphasis added). Just as in previous cases, *Griffith* by its terms bound state courts to apply our retroactivity decisions.

Two months after *Griffith* was decided, we granted certiorari in *Yates* v. *Aiken*, 484 U. S. 211 (1988). In that case, a

South Carolina state habeas court had decided that our decision in *Francis* v. *Franklin*, 471 U. S. 307 (1985), should not be applied retroactively. If the authority of state courts to apply their own retroactivity rules were well established under our precedents—as the majority would have it, see *ante*, at 275–282—this case should have been easily decided on the ground that whatever the federal retroactivity rule, the State could adopt its own rule on the retroactivity of newly announced federal constitutional standards.

Instead, the State argued to this Court "that we should adopt Justice Harlan's theory that a newly announced constitutional rule should not be applied retroactively to cases pending on collateral review unless" the rule meets certain criteria—the flip side of Justice Harlan's view about cases on direct review that we had accepted in *Griffith*. 484 U. S., at 215. Under that approach, the State argued, *Francis* would not be applied retroactively on collateral review. 484 U. S., at 215. In response, we discussed Justice Harlan's "distinction between direct review and collateral review." *Ibid.* We found, however, that it was "not necessary to determine whether we should . . . adopt Justice Harlan's reasoning as to the retroactivity of cases announcing new constitutional rules to cases pending on collateral review," *id.*, at 215–216, because *Francis* did not announce a new rule.

This Court went on, however, to address South Carolina's alternative argument—that it "has the authority to establish the scope of its own habeas corpus proceedings," which would allow it in the case before the Court "to refuse to apply a new rule of federal constitutional law retroactively in such a proceeding." 484 U. S., at 217. This argument should sound familiar—whatever the federal retroactivity rule, a State may establish its own retroactivity rule for its own collateral proceedings. This Court rejected that proposition, not only because it did not regard *Francis* as a new rule, but also because the state court did not "plac[e] any limit on the issues that it will entertain in collateral proceed-

ings." 484 U. S., at 218. As this Court explained, if the state court "consider[s] the merits of the federal claim, it has a duty to grant the relief that *federal law* requires." *Ibid.* (emphasis added).

Given all this, the present case should come out the way it does only if *Teague* changed the nature of retroactivity as a creature of federal law binding on the States, and adopted the argument rejected in *Yates*—that when it comes to retroactivity, a State "has the authority to establish the scope of its own habeas corpus proceedings." *Teague* did no such thing.

B

In *Teague*, we completed the project of conforming our view on the retroactivity of new rules of criminal procedure to those of Justice Harlan. Justice O'Connor's plurality opinion posed the problem by noting, with more than a bit of understatement, that the "*Linkletter* retroactivity standard has not led to consistent results." 489 U. S., at 302. In light of these concerns, and because of "'the important distinction between direct review and collateral review,'" *id.*, at 307 (quoting *Yates*, *supra*, at 215), we generally adopted Justice Harlan's approach to retroactivity on collateral review, 489 U. S., at 310, just as we had previously adopted his approach on direct review in *Griffith*.

The *Linkletter* approach to retroactivity was thus overruled in favor of the Harlan approach in two steps: *Griffith* and *Teague*. There is no dispute that *Griffith* is fully binding on States; a new rule "is to be applied retroactively to all cases, *state or federal*, pending on direct review or not yet final." 479 U. S., at 328 (emphasis added). *Teague* is simply the other side of the coin, and it too should be binding in "all cases, state or federal." The fact that *Linkletter* was overruled in two stages rather than one should not lead to a different result.

Indeed, *Teague* did not purport to distinguish between federal and state collateral review. Justice O'Connor's opinion

noted that "in *Yates* v. *Aiken*, we were asked to decide whether the rule announced in *Francis* v. *Franklin* should be applied to a defendant on collateral review at the time that case was decided," but that we were able to decide the case on alternative grounds. 489 U. S., at 307 (citations omitted). This citation of *Yates*—a state habeas case—makes clear that *Teague* contemplated no difference between retroactivity of new federal rules in state and federal collateral proceedings. Thus, our unqualified holding—that "[u]nless they fall within an exception to the general rule, new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced," 489 U. S., at 310 (plurality opinion)—is enough to decide this case.

Moreover, the reasons the *Teague* Court provided for adopting Justice Harlan's view apply to state as well as federal collateral review. The majority is quite right that *Teague* invoked the interest in comity between the state and federal sovereigns. *Id.*, at 308. But contrary to the impression conveyed by the majority, there was more to *Teague* than that. *Teague* also relied on the interest in finality: "Application of constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." *Id.*, at 309. The Court responds by flatly stating that "finality of state convictions is a *state* interest, not a federal one." *Ante*, at 280. But while it is certainly true that finality of state convictions is a state interest, that does mean it is not also a federal one. After all, our decision in *Griffith* made finality the touchstone for retroactivity of new federal rules, and bound States to that judgment. See 479 U. S., at 328 (new rules are "to be applied retroactively to all cases, *state or federal*, pending on direct review or not yet final" (emphasis added)).

It is quite a radical proposition to assert that this Court has nothing to say about an interest "essential to the operation of our criminal justice system," without which "the criminal law is deprived of much of its deterrent effect," when the question is whether this interest is being undermined by the very rules of *federal* constitutional procedure that we are charged with expounding. A State alone may "evaluate, and weigh the importance of" finality interests, *ante*, at 280, when it decides which substantive rules of criminal procedure *state law* affords; it is quite a leap to hold, as the Court does, that they alone can do so in the name of the Federal Constitution.

Teague was also based on the inequity of the *Linkletter* approach to retroactivity. After noting that the disparate treatment of similarly situated defendants led us in *Griffith* to adopt Justice Harlan's view for cases on direct appeal, the Court then explained that the "*Linkletter* standard also led to unfortunate disparity in the treatment of similarly situated defendants on collateral review." 489 U. S., at 305 (plurality opinion). See also *id.*, at 316 (the Court's new approach to retroactivity "avoids the inequity resulting from the uneven application of new rules to similarly situated defendants").

This interest in reducing the inequity of haphazard retroactivity standards and disuniformity in the application of federal law is quite plainly a predominantly federal interest. Indeed, it was one of the main reasons we cited in *Griffith* for imposing a uniform rule of retroactivity upon *state* courts for cases on direct appeal. And, more to the point, it is the very interest that animates the Supremacy Clause and our role as the "one supreme Court" charged with enforcing it.

Justice Story, writing for the Court, noted nearly two centuries ago that the Constitution requires "*uniformity* of decisions throughout the whole United States, upon all subjects within [its] purview." *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 347–348 (1816). Indeed, the "fundamental principle" of

our Constitution, as Justice O'Connor once put it, is "that a single sovereign's laws should be applied equally to all." Our Judicial Federalism, 35 Case W. Res. L. Rev. 1, 4 (1984–1985). States are free to announce their own state-law rules of criminal procedure, and to apply them retroactively in whatever manner they like. That is fully consistent with the principle that "a single sovereign's laws should be applied equally to all." But the Court's opinion invites just the sort of disuniformity in federal law that the Supremacy Clause was meant to prevent. The same determination of a federal constitutional violation at the same stage in the criminal process can result in freedom in one State and loss of liberty or life in a neighboring State.[2] The Court's opinion allows "a single sovereign's law"—the Federal Constitution, as interpreted by this Court—to be applied differently in every one of the several States.

Finally, from *Linkletter* through *Johnson* to *Teague*, we have always emphasized that determining whether a new federal right is retroactive turns on the nature of the substantive federal rule at issue. See *Linkletter*, 381 U. S., at

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[2] The Court points out that the defendants in such a case are differently situated because they violated the laws of and were tried in different States. *Ante*, at 290. But disparate treatment under substantively different state laws is something we expect in our federal system; disparate treatment under the same Federal Constitution is quite a different matter.

The majority also points out that the rule announced in *Griffith* v. *Kentucky*, 479 U. S. 314 (1987)—that full retroactive application ends with the conclusion of direct appeal—creates its own disuniformity, because finality turns on how quickly a State brings its direct appeals to a close. *Ante*, at 291. The same point was raised by the *Griffith* dissenters, 479 U. S., at 331–332 (opinion of White, J.), and rejected as pertinent by the majority in that case, *id.*, at 327–328. The disuniformity that the majority emphasizes today and the dissenters emphasized in *Griffith* is a necessary consequence of our having chosen a relatively clear rule—finality—to delineate the line between full retroactivity and presumptive nonretroactivity. The relevant point is that whatever inequity arises from the *Griffith* rule, it is based on a balancing of costs and benefits that *this* Court—not 50 different sovereigns—has performed.

629 (in deciding retroactivity, we "loo[k] to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation"); *Johnson*, 384 U. S., at 728 ("Each constitutional rule of criminal procedure has its own distinct functions, its own background of precedent, and its own impact on the administration of justice, and the way in which these factors combine [to decide the retroactivity issue] must inevitably vary with the dictate involved"); *Teague*, *supra*, at 311–315 (plurality opinion) (deciding whether rule is applicable to cases on collateral review turns on whether the rule "places 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe,'" and whether the rule is an "absolute prerequisite to fundamental fairness that is 'implicit in the concept of ordered liberty'"). That is how we determine retroactivity—by carefully examining the underlying federal right. See, *e. g.*, *Whorton* v. *Bockting*, 549 U. S. 406, 418–421 (2007); *Schriro* v. *Summerlin*, 542 U. S. 348, 353–354 (2004); *Sawyer* v. *Smith*, 497 U. S. 227, 243–245 (1990); *Penry* v. *Lynaugh*, 492 U. S. 302, 318–319 (1989).

When this Court decides that a particular right shall not be applied retroactively, but a state court finds that it should, it is at least in part because of a different assessment by the state court of the nature of the underlying federal right—something on which the Constitution gives this Court the final say. The nature and scope of the new rules we announce directly determines whether they will be applied retroactively on collateral review. Today's opinion stands for the unfounded proposition that while we alone have the final say in expounding the former, we have no control over the latter.

II

The Court's holding is not only based on a misreading of our retroactivity cases, but also on a misunderstanding of the nature of retroactivity generally. The majority's decision is

grounded on the erroneous view that retroactivity is a remedial question. See *ante*, at 290–291 ("It is important to keep in mind that our jurisprudence concerning the 'retroactivity' of 'new rules' of constitutional law is primarily concerned, not with the question whether a constitutional violation occurred, but with the availability or nonavailability of remedies"). But as explained in the lead opinion in *American Trucking*—penned by the author of the lead opinion in *Teague*—it is an "error" to "equat[e] a decision not to apply a rule retroactively with the judicial choice of a remedy." 496 U. S., at 194 (plurality opinion of O'Connor, J.). As Justice O'Connor went on to emphasize, "[n]or do this Court's retroactivity decisions, whether in the civil or criminal sphere, support the . . . assertion that our retroactivity doctrine is a remedial principle." *Ibid.* "While application of the principles of retroactivity may have remedial effects, they are not themselves remedial principles. . . . A decision defining the operative conduct or events that will be adjudicated under old law does not, in itself, specify an appropriate remedy." *Id.*, at 195. See also *Lemon* v. *Kurtzman*, 411 U. S. 192, 199 (1973) (plurality opinion) (describing the question of retroactivity as "whether we will apply a new constitutional rule of criminal law in reviewing judgments of conviction obtained under a prior standard," and contrasting this with the question of the "appropriate scope of federal equitable remedies").

In other words, when we ask whether and to what extent a rule will be retroactively applied, we are asking what law—new or old—will apply. As we have expressly noted, "[t]he *Teague* doctrine . . . does not involve a special 'remedial' limitation on the principle of 'retroactivity' as much as it reflects a limitation inherent in the principle itself." *Reynoldsville Casket Co.* v. *Hyde*, 514 U. S. 749, 758 (1995).

The foregoing prompts a lengthy rejoinder from the Court, to the effect that it is wrong to view retroactivity as a federal choice-of-law question rather than a remedial one.

That view, we are told, was rejected by five Justices in *American Trucking* and then by the Court in *Harper*. *Ante*, at 284–288. But the proposition on which five Members of the Court agreed in *American Trucking*, and that the Court adopted in *Harper*, was that the *Griffith* rule of retroactivity—that is, that newly announced constitutional decisions should apply to all cases on direct review—should apply to civil cases as well as criminal. See *American Trucking*, 496 U. S., at 201 (SCALIA, J., concurring in judgment) ("I share JUSTICE STEVENS' perception that prospective decisionmaking is incompatible with the judicial role, which is to say what the law is, not to prescribe what it shall be"); *id.*, at 212 (STEVENS, J., dissenting) ("Fundamental notions of fairness and legal process dictate that the same rules should be applied to all similar cases on direct review"); *Harper*, 509 U. S., at 97 ("When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review").

Neither JUSTICE SCALIA's concurrence in *American Trucking* combined with the dissent, nor the Court's opinion in *Harper*, resolved that retroactivity was a remedial question. That is why, the year after *American Trucking* was decided, two of the Justices in today's majority could explain:

> "Since the question is whether the court should apply the old rule or the new one, retroactivity is properly seen in the first instance as a matter of choice of law, 'a choice . . . between the principle of forward operation and that of relation backward.' *Great Northern R. Co.* v. *Sunburst Oil & Refining Co.*, 287 U. S. 358, 364 (1932). Once a rule is found to apply 'backward,' there may then be a further issue of remedies, *i. e.*, whether the party prevailing under a new rule should obtain the same relief that would have been awarded if the rule had been an old one. Subject to possible constitutional thresholds, the remedial inquiry is one governed by state law,

> at least where the case originates in state court. See *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167, 210 (1990) (STEVENS, J., dissenting). *But the antecedent choice-of-law question is a federal one where the rule at issue itself derives from federal law, constitutional or otherwise.* See *Smith*, *supra*, at 177–178 (plurality opinion)." *James B. Beam Distilling Co.* v. *Georgia*, 501 U. S. 529, 534–535 (1991) (opinion of SOUTER, J., joined by STEVENS, J.) (citation omitted; emphasis added).

And *Harper* certainly did not view the retroactivity of federal rules as a remedial question for state courts. Quite the contrary: *Harper* held that the "Supremacy Clause does not allow federal retroactivity doctrine to be supplanted by the invocation of a contrary approach to retroactivity under state law," 509 U. S., at 100 (citation omitted), and expressly treated retroactivity and remedy as separate questions, *id.*, at 100–102.

The majority explains that when we announce a new rule of law, we are not "'*creating* the law,'" but rather "'*declaring* what the law already is.'" *Ante*, at 286 (quoting *American Trucking*, *supra*, at 201 (SCALIA, J., concurring in judgment)). But this has nothing to do with the question before us. The point may lead to the conclusion that nonretroactivity of our decisions is improper—the position the Court has adopted in both criminal and civil cases on direct review—but everyone agrees that full retroactivity is not required on collateral review. It necessarily follows that we must choose whether "new" or "old" law applies to a particular category of cases. Suppose, for example, that a defendant, whose conviction became final before we announced our decision in *Crawford* v. *Washington*, 541 U. S. 36 (2004), argues (correctly) on collateral review that he was convicted in violation of both *Crawford* and *Ohio* v. *Roberts*, 448 U. S. 56 (1980), the case that *Crawford* overruled. Under our decision in *Whorton*, 549 U. S. 406, the "new" rule announced in

Crawford would not apply retroactively to the defendant. But I take it to be uncontroversial that the defendant would nevertheless get the benefit of the "old" rule of *Roberts*, even under the view that the rule not only is but always has been an incorrect reading of the Constitution. See, *e. g.*, *Yates*, 484 U. S., at 218. Thus, the question whether a particular federal rule will apply retroactively is, in a very real way, a choice between new and old law. The issue in this case is who should decide.

The proposition that the question of retroactivity—that is, the choice between new or old law in a particular case—is distinct from the question of remedies has several important implications for this case. To begin with, whatever intuitive appeal may lie in the majority's statement that "the remedy a state court chooses to provide its citizens for violations of the Federal Constitution is primarily a question of state law," *ante*, at 288, the statement misses the mark. The relevant inquiry is not about remedy; it is about choice of law—new or old. There is no reason to believe, either legally or intuitively, that States should have any authority over this question when it comes to which *federal* constitutional rules of criminal procedure to apply.[3]

Indeed, when the question is what federal rule of decision from this Court should apply to a particular case, no Court but this one—which has the ultimate authority "to say what the law is," *Marbury*, 1 Cranch, at 177—should have final say over the answer. See *Harper*, *supra*, at 100 ("Supremacy Clause does not allow federal retroactivity doctrine to

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[3] A federal court applying state law under *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938), follows state choice-of-law rules as well, see *Klaxon Co.* v. *Stentor Elec. Mfg. Co.*, 313 U. S. 487, 496 (1941). It is not free to follow its own federal rule simply because the issue arises in federal court. By the same token, a state court considering a federal constitutional claim on collateral review should follow the federal rule on whether new or old law applies. It is not free to follow its own state-law view on the question simply because the issue arises in state court.

be supplanted by the invocation of a contrary approach to retroactivity under state law" (citation omitted)). This is enough to rebut the proposition that there is no "source of [our] authority" to bind state courts to follow our retroactivity decisions. *Ante*, at 290. Retroactivity is a question of federal law, and our final authority to construe it cannot, at this point in the Nation's history, be reasonably doubted.

Principles of federalism protect the prerogative of States to extend greater rights under their own laws than are available under federal law. The question here, however, is the availability of protection under the Federal Constitution—specifically, the Confrontation Clause of the Sixth Amendment. It is no intrusion on the prerogatives of the States to recognize that it is for this Court to decide such a question of federal law, and that our decision is binding on the States under the Supremacy Clause.

Consider the flip side of the question before us today: If a State interprets its own constitution to provide protection beyond that available under the Federal Constitution, and has ruled that this interpretation is not retroactive, no one would suppose that a federal court could hold otherwise, and grant relief under state law that a state court would refuse to grant. The result should be the same when a state court is asked to give retroactive effect to a right under the Federal Constitution that this Court has held is not retroactive.

The distinction between retroactivity and available remedies highlights the fact that the majority's assertion "that *Teague*'s general rule of nonretroactivity was an exercise of this Court's power to interpret the federal habeas statute," *ante*, at 278—even if correct—is neither here nor there.[1]

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[1]The majority's assertion, however, is a bit of an overstatement. *Teague* v. *Lane*, 489 U. S. 288 (1989), would be an odd form of statutory interpretation; 28 U. S. C. §2254 is cited once in passing, 489 U. S., at 298, and §2243—the statute that the Court believes *Teague* was interpreting—is not cited at all. As support for its proposition, the Court cites several cases having nothing to do with retroactivity, and numerous concurring

While Congress has substantial control over federal courts' ability to grant relief for violations of the Federal Constitution, the Constitution gives us the responsibility to decide what its provisions mean. And with that responsibility necessarily comes the authority to determine the scope of those provisions—when they apply and when they do not.

This proposition—and the importance of the distinction between retroactivity and available remedies—were confirmed when we considered the availability of federal collateral review of state convictions under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). See 28 U. S. C. §2254(d)(1). Whatever control Congress has over federal courts' ability to grant postconviction remedies, the availability or scope of those remedies has no bearing on our decisions about whether new or old law should apply in a particular case. That is why, after AEDPA's passage, we view the *Teague* inquiry as distinct from that under AEDPA. See *Horn* v. *Banks*, 536 U. S. 266, 272 (2002) (*per curiam*) ("While it is of course a necessary prerequisite to federal habeas relief that a prisoner satisfy the AEDPA standard of review set forth in 28 U. S. C. §2254(d) . . . , none of our post-AEDPA cases have suggested that a writ of habeas corpus should automatically issue if a prisoner satisfies the AEDPA standard, or that AEDPA relieves courts from the responsibility of addressing properly raised *Teague* arguments"). The majority today views the issue as simply one of what remedies a State chooses to apply; our cases confirm that the question whether a federal decision is retroactive is one of federal law distinct from the issue of available remedies.

Lurking behind today's decision is of course the question of just how free state courts are to define the retroactivity of our decisions interpreting the Federal Constitution. I do not see any basis in the majority's logic for concluding that

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and dissenting opinions that did not command a majority. See *ante*, at 278, and n. 15.

States are free to hold our decisions retroactive when we have held they are not, but not free to hold that they are not when we have held they are. Under the majority's reasoning, in either case the availability of relief in state court is a question for those courts to evaluate independently. The majority carefully reserves that question, see *ante*, at 269, n. 4, confirming that the majority regards it as open.

Nor is there anything in today's decision suggesting that States could not adopt more nuanced approaches to retroactivity. For example, suppose we hold that the Sixth Amendment right to be represented by particular counsel of choice, recently announced in *United States* v. *Gonzalez-Lopez*, 548 U. S. 140 (2006), is a new rule that does not apply retroactively. Under the majority's rationale, a state court could decide that it nonetheless will apply *Gonzalez-Lopez* retroactively, but only if the defendant could prove prejudice, or some other criterion we had rejected as irrelevant in defining the substantive right. Under the majority's logic, that would not be a misapplication of our decision in *Gonzalez-Lopez*—which specifically rejected any required showing of prejudice, *id.*, at 147–148—but simply a state decision on the scope of available remedies in state court. The possible permutations—from State to State, and federal right to federal right—are endless.

* * *

Perhaps all this will be dismissed as fine parsing of somewhat arcane precedents, over which reasonable judges may disagree. Fair enough; but I would hope that enough has been said at least to refute the majority's assertion that its conclusion is dictated by our prior cases. This dissent is compelled not simply by disagreement over how to read those cases, but by the fundamental issues at stake—our role under the Constitution as the final arbiter of federal law, both as to its meaning and its reach, and the accompanying duty to ensure the uniformity of that federal law.

Stephen Danforth's conviction became final before the new rule in *Crawford* was announced. In *Whorton* v. *Bockting*, 549 U. S. 406, we held that *Crawford* shall not be applied retroactively on collateral review. That should be the end of the matter. I respectfully dissent.

Syllabus

RIEGEL, INDIVIDUALLY AND AS ADMINISTRATOR OF ESTATE OF RIEGEL *v.* MEDTRONIC, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 06–179. Argued December 4, 2007—Decided February 20, 2008

The Medical Device Amendments of 1976 (MDA) created a scheme of federal safety oversight for medical devices while sweeping back state oversight schemes. The statute provides that a State shall not "establish or continue in effect with respect to a device intended for human use any requirement— . . . (1) which is different from, or in addition to, any requirement applicable under [federal law] to the device, and . . . (2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under" relevant federal law. 21 U. S. C. §360k(a). The MDA calls for federal oversight of medical devices that varies with the type of device at issue. The most extensive oversight is reserved for Class III devices that undergo the premarket approval process. These devices may enter the market only if the Food and Drug Administration (FDA) reviews their design, labeling, and manufacturing specifications and determines that those specifications provide a reasonable assurance of safety and effectiveness. Manufacturers may not make changes to such devices that would affect safety or effectiveness unless they first seek and obtain permission from the FDA.

Charles Riegel and his wife, petitioner Donna Riegel, brought suit against respondent Medtronic after a Medtronic catheter ruptured in Charles Riegel's coronary artery during heart surgery. The catheter is a Class III device that received FDA premarket approval. The Riegels alleged that the device was designed, labeled, and manufactured in a manner that violated New York common law. The District Court held that the MDA pre-empted the Riegels' claims of strict liability; breach of implied warranty; and negligence in the design, testing, inspection, distribution, labeling, marketing, and sale of the catheter, and their claim of negligent manufacturing insofar as the claim was not premised on the theory that Medtronic had violated federal law. The Second Circuit affirmed.

Held: The MDA's pre-emption clause bars common-law claims challenging the safety or effectiveness of a medical device marketed in a form that received premarket approval from the FDA. Pp. 321–330.

Syllabus

(a) The Federal Government has established "requirement[s] applicable . . . to" Medtronic's catheter within §360k(a)(1)'s meaning. In *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 495, 500–501, the Court interpreted the MDA's pre-emption provision in a manner "substantially informed" by an FDA regulation, 21 CFR §808.1(d), which says that state requirements are pre-empted only when the FDA "has established specific counterpart regulations or there are other specific requirements applicable to a particular device" under federal law. Premarket approval imposes "specific requirements applicable to a particular device." The FDA requires that a device that has received premarket approval be marketed without significant deviations from the specifications in the device's approval application, for the reason that the FDA has determined that those specifications provide a reasonable assurance of safety and effectiveness. Pp. 321–323.

(b) Petitioner's common-law claims are pre-empted because they are based upon New York "requirement[s]" with respect to Medtronic's catheter that are "different from, or in addition to," the federal ones, and that relate to safety and effectiveness, §360k(a). Pp. 323–330.

(1) Common-law negligence and strict-liability claims impose "requirement[s]" under the ordinary meaning of that term, see, *e. g.*, *Lohr*, *supra*, at 503–505, 512; *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 521–523, 548–549. There is nothing in the MDA that contradicts this normal meaning. Pp. 323–325.

(2) The Court rejects petitioner's contention that the duties underlying her state-law tort claims are not pre-empted because general common-law duties are not requirements maintained "with respect to devices." Petitioner's suit depends upon New York's "continu[ing] in effect" general tort duties "with respect to" Medtronic's catheter. Title 21 CFR §808.1(d)(1)—which states that MDA pre-emption does not extend to "[s]tate or local requirements of general applicability [whose] purpose . . . relates either to other products in addition to devices . . . or to unfair trade practices in which the requirements are not limited to devices"—does not alter the Court's interpretation. Pp. 327–330.

(c) The Court declines to address in the first instance petitioner's argument that this lawsuit raises "parallel" claims that are not pre-empted by §360k under *Lohr*, *supra*, at 495, 513. P. 330.

451 F. 3d 104, affirmed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, SOUTER, THOMAS, BREYER, and ALITO, JJ., joined, and in which STEVENS, J., joined except for Parts III–A and III–B. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 330. GINSBURG, J., filed a dissenting opinion, *post*, p. 333.

Counsel

Allison M. Zieve argued the cause for petitioner. With her on the briefs were *Brian Wolfman*, *Scott L. Nelson*, and *Wayne P. Smith*.

Theodore B. Olson argued the cause for respondent. With him on the brief were *Matthew D. McGill*, *Amir C. Tayrani*, *Kenneth S. Geller*, *David M. Gossett*, and *Andrew E. Tauber*.

Deputy Solicitor General Kneedler argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Daryl Joseffer*, *Douglas N. Letter*, *Sharon Swingle*, and *Daniel Meron*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of New York et al. by *Andrew M. Cuomo*, Attorney General of New York, *Barbara D. Underwood*, Solicitor General, *Michelle Aronowitz*, Deputy Solicitor General, and *Richard Dearing* and *Cecelia Chang*, Assistant Solicitors General, and by the Attorneys General for their respective jurisdictions as follows: *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *Richard Blumenthal* of Connecticut, *Joseph R. Biden III* of Delaware, *Linda Singer* of the District of Columbia, *Bill McCollum* of Florida, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Tom Miller* of Iowa, *Paul J. Morrison* of Kansas, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Catherine Cortez Masto* of Nevada, *Gary K. King* of New Mexico, *Wayne Stenehjem* of North Dakota, *Marc Dann* of Ohio, *Hardy Myers* of Oregon, *Henry D. McMaster* of South Carolina, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Rob McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *J. B. Van Hollen* of Wisconsin, and *Patrick J. Crank* of Wyoming; for AARP et al. by *David C. Frederick* and *Brendan J. Crimmins;* for the American Association for Justice et al. by *Jeffrey Robert White* and *Kathleen Flynn Peterson;* for the Consumers Union of United States, Inc., by *Lisa Heinzerling* and *Mark Savage;* for the Public Health Advocacy Institute et al. by *Timothy J. Dowling;* and for Senator Edward M. Kennedy et al. by *William B. Schultz*.

Briefs of *amici curiae* urging affirmance were filed for the Advanced Medical Technology Association et al. by *Carter G. Phillips*, *Daniel E. Troy*, *Rebecca K. Wood*, *Eamon P. Joyce*, *Michael W. Davis*, *Paul J. Maloney*, and *William J. Carter;* for the Chamber of Commerce of the United

JUSTICE SCALIA delivered the opinion of the Court.

We consider whether the pre-emption clause enacted in the Medical Device Amendments of 1976, 21 U. S. C. §360k, bars common-law claims challenging the safety and effectiveness of a medical device given premarket approval by the Food and Drug Administration (FDA).

I

A

The Federal Food, Drug, and Cosmetic Act (FDCA), 52 Stat. 1040, as amended, 21 U. S. C. §301 *et seq.*, has long required FDA approval for the introduction of new drugs into the market. Until the statutory enactment at issue here, however, the introduction of new medical devices was left largely for the States to supervise as they saw fit. See *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 475–476 (1996).

The regulatory landscape changed in the 1960's and 1970's, as complex devices proliferated and some failed. Most notably, the Dalkon Shield intrauterine device, introduced in 1970, was linked to serious infections and several deaths, not to mention a large number of pregnancies. Thousands of tort claims followed. R. Bacigal, The Limits of Litigation: The Dalkon Shield Controversy 3 (1990). In the view of many, the Dalkon Shield failure and its aftermath demonstrated the inability of the common-law tort system to manage the risks associated with dangerous devices. See, *e. g.*, S. Foote, Managing the Medical Arms Race 151–152 (1992). Several States adopted regulatory measures, including California, which in 1970 enacted a law requiring premarket approval of medical devices. 1970 Cal. Stats. ch. 1573,

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States of America by *Alan Untereiner*, *Robin S. Conrad*, and *Amar D. Sarwal*; for CropLife America et al. by *Lawrence S. Ebner* and *Douglas T. Nelson*; for the Product Liability Advisory Council, Inc., by *Robert N. Weiner*; and for the Washington Legal Foundation by *Daniel J. Popeo* and *Richard A. Samp*.

§§ 26670–26693; see also Leflar & Adler, The Preemption Pentad: Federal Preemption of Products Liability Claims After *Medtronic*, 64 Tenn. L. Rev. 691, 703, n. 66 (1997) (identifying 13 state statutes governing medical devices as of 1976).

Congress stepped in with passage of the Medical Device Amendments of 1976 (MDA), 21 U. S. C. §360c *et seq.*,[1] which swept back some state obligations and imposed a regime of detailed federal oversight. The MDA includes an express pre-emption provision that states:

> "Except as provided in subsection (b) of this section, no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement—
>
> "(1) which is different from, or in addition to, any requirement applicable under this chapter to the device, and
>
> "(2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under this chapter." §360k(a).

The exception contained in subsection (b) permits the FDA to exempt some state and local requirements from pre-emption.

The new regulatory regime established various levels of oversight for medical devices, depending on the risks they present. Class I, which includes such devices as elastic bandages and examination gloves, is subject to the lowest level of oversight: "general controls," such as labeling requirements. §360c(a)(1)(A); FDA, Device Advice: Device Classes, http://www.fda.gov/cdrh/devadvice/3132.html (all Internet materials as visited Feb. 14, 2008, and available in Clerk of Court's case file). Class II, which includes such devices as powered wheelchairs and surgical drapes, *ibid.*,

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[1] Unqualified §360 *et seq.* numbers hereinafter refer to sections of 21 U. S. C.

is subject in addition to "special controls" such as performance standards and postmarket surveillance measures, §360c(a)(1)(B).

The devices receiving the most federal oversight are those in Class III, which include replacement heart valves, implanted cerebella stimulators, and pacemaker pulse generators, FDA, Device Advice: Device Classes, *supra*. In general, a device is assigned to Class III if it cannot be established that a less stringent classification would provide reasonable assurance of safety and effectiveness, and the device is "purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health," or "presents a potential unreasonable risk of illness or injury." §360c(a)(1)(C)(ii).

Although the MDA established a rigorous regime of premarket approval for new Class III devices, it grandfathered many that were already on the market. Devices sold before the MDA's effective date may remain on the market until the FDA promulgates, after notice and comment, a regulation requiring premarket approval. §§360c(f)(1), 360e(b)(1). A related provision seeks to limit the competitive advantage grandfathered devices receive. A new device need not undergo premarket approval if the FDA finds it is "substantially equivalent" to another device exempt from premarket approval. §360c(f)(1)(A). The agency's review of devices for substantial equivalence is known as the §510(k) process, named after the statutory provision describing the review. Most new Class III devices enter the market through §510(k). In 2005, for example, the FDA authorized the marketing of 3,148 devices under §510(k) and granted premarket approval to just 32 devices. P. Hutt, R. Merrill, & L. Grossman, Food and Drug Law 992 (3d ed. 2007).

Premarket approval is a "rigorous" process. *Lohr*, *supra*, at 477. A manufacturer must submit what is typically a multivolume application. FDA, Device Advice—Premar-

ket Approval (PMA) 18, http://www.fda.gov/cdrh/devadvice/pma/printer.html. It includes, among other things, full reports of all studies and investigations of the device's safety and effectiveness that have been published or should reasonably be known to the applicant; a "full statement" of the device's "components, ingredients, and properties and of the principle or principles of operation"; "a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such device"; samples or device components required by the FDA; and a specimen of the proposed labeling. §360e(c)(1). Before deciding whether to approve the application, the agency may refer it to a panel of outside experts, 21 CFR §814.44(a) (2007), and may request additional data from the manufacturer, §360e(c)(1)(G).

The FDA spends an average of 1,200 hours reviewing each application, *Lohr*, 518 U. S., at 477, and grants premarket approval only if it finds there is a "reasonable assurance" of the device's "safety and effectiveness," §360e(d). The agency must "weig[h] any probable benefit to health from the use of the device against any probable risk of injury or illness from such use." §360c(a)(2)(C). It may thus approve devices that present great risks if they nonetheless offer great benefits in light of available alternatives. It approved, for example, under its Humanitarian Device Exemption procedures, a ventricular assist device for children with failing hearts, even though the survival rate of children using the device was less than 50 percent. FDA, Center for Devices and Radiological Health, Debakey VAD Child Left Ventricular Assist System-H030003, Summary of Safety and Probable Benefit 20 (2004), http://www.fda.gov/cdrh/pdf3/H030003b.pdf.

The premarket approval process includes review of the device's proposed labeling. The FDA evaluates safety and effectiveness under the conditions of use set forth on the label, §360c(a)(2)(B), and must determine that the proposed labeling is neither false nor misleading, §360e(d)(1)(A).

After completing its review, the FDA may grant or deny premarket approval. §360e(d). It may also condition approval on adherence to performance standards, 21 CFR §861.1(b)(3), restrictions upon sale or distribution, or compliance with other requirements, §814.82. The agency is also free to impose device-specific restrictions by regulation. §360j(e)(1).

If the FDA is unable to approve a new device in its proposed form, it may send an "approvable letter" indicating that the device could be approved if the applicant submitted specified information or agreed to certain conditions or restrictions. 21 CFR §814.44(e). Alternatively, the agency may send a "not approvable" letter, listing the grounds that justify denial and, where practical, measures that the applicant could undertake to make the device approvable. §814.44(f).

Once a device has received premarket approval, the MDA forbids the manufacturer to make, without FDA permission, changes in design specifications, manufacturing processes, labeling, or any other attribute, that would affect safety or effectiveness. §360e(d)(6)(A)(i). If the applicant wishes to make such a change, it must submit, and the FDA must approve, an application for supplemental premarket approval, to be evaluated under largely the same criteria as an initial application. §360e(d)(6); 21 CFR §814.39(c).

After premarket approval, the devices are subject to reporting requirements. §360i. These include the obligation to inform the FDA of new clinical investigations or scientific studies concerning the device which the applicant knows of or reasonably should know of, 21 CFR §814.84(b)(2), and to report incidents in which the device may have caused or contributed to death or serious injury, or malfunctioned in a manner that would likely cause or contribute to death or serious injury if it recurred, §803.50(a). The FDA has the power to withdraw premarket approval based on newly reported data or existing information and must withdraw ap-

proval if it determines that a device is unsafe or ineffective under the conditions in its labeling. §360e(e)(1); see also §360h(e) (recall authority).

B

Except as otherwise indicated, the facts set forth in this section appear in the opinion of the Court of Appeals. The device at issue is an Evergreen Balloon Catheter marketed by defendant-respondent Medtronic, Inc. It is a Class III device that received premarket approval from the FDA in 1994; changes to its label received supplemental approvals in 1995 and 1996.

Charles Riegel underwent coronary angioplasty in 1996, shortly after suffering a myocardial infarction. App. to Pet. for Cert. 56a. His right coronary artery was diffusely diseased and heavily calcified. Riegel's doctor inserted the Evergreen Balloon Catheter into his patient's coronary artery in an attempt to dilate the artery, although the device's labeling stated that use was contraindicated for patients with diffuse or calcified stenoses. The label also warned that the catheter should not be inflated beyond its rated burst pressure of eight atmospheres. Riegel's doctor inflated the catheter five times, to a pressure of 10 atmospheres; on its fifth inflation, the catheter ruptured. Complaint 3. Riegel developed a heart block, was placed on life support, and underwent emergency coronary bypass surgery.

Riegel and his wife Donna brought this lawsuit in April 1999, in the United States District Court for the Northern District of New York. Their complaint alleged that Medtronic's catheter was designed, labeled, and manufactured in a manner that violated New York common law, and that these defects caused Riegel to suffer severe and permanent injuries. The complaint raised a number of common-law claims. The District Court held that the MDA pre-empted Riegel's claims of strict liability; breach of implied warranty; and negligence in the design, testing, inspection, distribution, labeling, marketing, and sale of the catheter. App. to

Pet. for Cert. 68a; Complaint 3–4. It also held that the MDA pre-empted a negligent manufacturing claim insofar as it was not premised on the theory that Medtronic violated federal law. App. to Pet. for Cert. 71a. Finally, the court concluded that the MDA pre-empted Donna Riegel's claim for loss of consortium to the extent it was derivative of the pre-empted claims. *Id.*, at 68a; see also *id.*, at 75a.[2]

The United States Court of Appeals for the Second Circuit affirmed these dismissals. 451 F. 3d 104 (2006). The court concluded that Medtronic was "clearly subject to the federal, device-specific requirement of adhering to the standards contained in its individual, federally approved" premarket approval application. *Id.*, at 118. The Riegels' claims were pre-empted because they "would, if successful, impose state requirements that differed from, or added to," the device-specific federal requirements. *Id.*, at 121. We granted certiorari.[3] 551 U. S. 1144 (2007).

II

Since the MDA expressly pre-empts only state requirements "different from, or in addition to, any requirement applicable . . . to the device" under federal law, § 360k(a)(1), we must determine whether the Federal Government has established requirements applicable to Medtronic's catheter. If so, we must then determine whether the Riegels'

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[2] The District Court later granted summary judgment to Medtronic on those claims of Riegel it had found not pre-empted, viz., that Medtronic breached an express warranty and was negligent in manufacturing because it did not comply with federal standards. App. to Pet. for Cert. 90a. It consequently granted summary judgment as well on Donna Riegel's derivative consortium claim. *Ibid.* The Court of Appeals affirmed these determinations, and they are not before us.

[3] Charles Riegel having died, Donna Riegel is now petitioner on her own behalf and as administrator of her husband's estate. *Post*, p. 804. For simplicity's sake, the terminology of our opinion draws no distinction between Charles Riegel and the Estate of Charles Riegel and refers to the claims as belonging to the Riegels.

common-law claims are based upon New York requirements with respect to the device that are "different from, or in addition to," the federal ones, and that relate to safety and effectiveness. §360k(a).

We turn to the first question. In *Lohr*, a majority of this Court interpreted the MDA's pre-emption provision in a manner "substantially informed" by the FDA regulation set forth at 21 CFR §808.1(d). 518 U. S., at 495; see also *id.*, at 500–501. That regulation says that state requirements are pre-empted "only when the Food and Drug Administration has established specific counterpart regulations or there are other specific requirements applicable to a particular device . . . ." 21 CFR §808.1(d). Informed by the regulation, we concluded that federal manufacturing and labeling requirements applicable across the board to almost all medical devices did not pre-empt the common-law claims of negligence and strict liability at issue in *Lohr*. The federal requirements, we said, were not requirements specific to the device in question—they reflected "entirely generic concerns about device regulation generally." 518 U. S., at 501. While we disclaimed a conclusion that general federal requirements could never pre-empt, or general state duties never be pre-empted, we held that no pre-emption occurred in the case at hand based on a careful comparison between the state and federal duties at issue. *Id.*, at 500–501.

Even though substantial-equivalence review under §510(k) is device specific, *Lohr* also rejected the manufacturer's contention that §510(k) approval imposed device-specific "requirements." We regarded the fact that products entering the market through §510(k) may be marketed only so long as they remain substantial equivalents of the relevant pre-1976 devices as a qualification for an exemption rather than a requirement. *Id.*, at 493–494; see also *id.*, at 513 (O'Connor, J., concurring in part and dissenting in part).

Premarket approval, in contrast, imposes "requirements" under the MDA as we interpreted it in *Lohr*. Unlike gen-

eral labeling duties, premarket approval is specific to individual devices. And it is in no sense an exemption from federal safety review—it *is* federal safety review. Thus, the attributes that *Lohr* found lacking in §510(k) review are present here. While §510(k) is "'focused on *equivalence*, not safety,'" *id.*, at 493 (opinion of the Court), premarket approval is focused on safety, not equivalence. While devices that enter the market through §510(k) have "never been formally reviewed under the MDA for safety or efficacy," *ibid.*, the FDA may grant premarket approval only after it determines that a device offers a reasonable assurance of safety and effectiveness, §360e(d). And while the FDA does not "'require'" that a device allowed to enter the market as a substantial equivalent "take any particular form for any particular reason," 518 U. S., at 493, the FDA requires a device that has received premarket approval to be made with almost no deviations from the specifications in its approval application, for the reason that the FDA has determined that the approved form provides a reasonable assurance of safety and effectiveness.

III

We turn, then, to the second question: whether the Riegels' common-law claims rely upon "any requirement" of New York law applicable to the catheter that is "different from, or in addition to," federal requirements and that "relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device." §360k(a). Safety and effectiveness are the very subjects of the Riegels' common-law claims, so the critical issue is whether New York's tort duties constitute "requirements" under the MDA.

A

In *Lohr*, five Justices concluded that common-law causes of action for negligence and strict liability do impose "requirement[s]" and would be pre-empted by federal require-

ments specific to a medical device. See 518 U. S., at 512 (opinion of O'Connor, J., joined by Rehnquist, C. J., and SCALIA and THOMAS, JJ.); *id.*, at 503–505 (BREYER, J., concurring in part and concurring in judgment). We adhere to that view. In interpreting two other statutes we have likewise held that a provision pre-empting state "requirements" pre-empted common-law duties. *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431 (2005), found common-law actions to be pre-empted by a provision of the Federal Insecticide, Fungicide, and Rodenticide Act that said certain States "'shall not impose or continue in effect *any requirements* for labeling or packaging in addition to or different from those required under this subchapter.'" *Id.*, at 443 (discussing 7 U. S. C. § 136v(b); emphasis added). *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504 (1992), held common-law actions pre-empted by a provision of the Public Health Cigarette Smoking Act of 1969, 15 U. S. C. § 1334(b), which said that "[n]o requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes" whose packages were labeled in accordance with federal law. See 505 U. S., at 523 (plurality opinion); *id.*, at 548–549 (SCALIA, J., concurring in judgment in part and dissenting in part).

Congress is entitled to know what meaning this Court will assign to terms regularly used in its enactments. Absent other indication, reference to a State's "requirements" includes its common-law duties. As the plurality opinion said in *Cipollone*, common-law liability is "premised on the existence of a legal duty," and a tort judgment therefore establishes that the defendant has violated a state-law obligation. *Id.*, at 522. And while the common-law remedy is limited to damages, a liability award "'can be, indeed is designed to be, a potent method of governing conduct and controlling policy.'" *Id.*, at 521.

In the present case, there is nothing to contradict this normal meaning. To the contrary, in the context of this leg-

islation excluding common-law duties from the scope of pre-emption would make little sense. State tort law that requires a manufacturer's catheters to be safer, but hence less effective, than the model the FDA has approved disrupts the federal scheme no less than state regulatory law to the same effect. Indeed, one would think that tort law, applied by juries under a negligence or strict-liability standard, is less deserving of preservation. A state statute, or a regulation adopted by a state agency, could at least be expected to apply cost-benefit analysis similar to that applied by the experts at the FDA: How many more lives will be saved by a device which, along with its greater effectiveness, brings a greater risk of harm? A jury, on the other hand, sees only the cost of a more dangerous design, and is not concerned with its benefits; the patients who reaped those benefits are not represented in court. As JUSTICE BREYER explained in *Lohr*, it is implausible that the MDA was meant to "grant greater power (to set state standards 'different from, or in addition to,' federal standards) to a single state jury than to state officials acting through state administrative or legislative lawmaking processes." 518 U. S., at 504. That perverse distinction is not required or even suggested by the broad language Congress chose in the MDA,[4] and we will not turn somersaults to create it.

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[4]The Riegels point to §360k(b), which authorizes the FDA to exempt state "requirements" from pre-emption under circumstances that would rarely be met for common-law duties. But a law that permits an agency to exempt certain "requirements" from pre-emption does not suggest that no other "requirements" exist. The Riegels also invoke §360h(d), which provides that compliance with certain FDA orders "shall not relieve any person from liability under Federal or State law." This indicates that some state-law claims are not pre-empted, as we held in *Lohr*. But it could not possibly mean that *all* state-law claims are not pre-empted, since that would deprive the MDA pre-emption clause of all content. And it provides no guidance as to which state-law claims are pre-empted and which are not.

B

The dissent would narrow the pre-emptive scope of the term "requirement" on the grounds that it is "difficult to believe that Congress would, without comment, remove all means of judicial recourse" for consumers injured by FDA-approved devices. *Post*, at 337 (opinion of GINSBURG, J.) (internal quotation marks omitted). But, as we have explained, this is exactly what a pre-emption clause for medical devices does by its terms. The operation of a law enacted by Congress need not be seconded by a committee report on pain of judicial nullification. See, *e. g.*, *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253–254 (1992). It is not our job to speculate upon congressional motives. If we were to do so, however, the only indication available—the text of the statute—suggests that the solicitude for those injured by FDA-approved devices, which the dissent finds controlling, was overcome in Congress's estimation by solicitude for those who would suffer without new medical devices if juries were allowed to apply the tort law of 50 States to all innovations.[5]

In the case before us, the FDA has supported the position taken by our opinion with regard to the meaning of the statute. We have found it unnecessary to rely upon that agency view because we think the statute itself speaks clearly to the point at issue. If, however, we had found the statute ambiguous and had accorded the agency's current position deference, the dissent is correct, see *post*, at 338, n. 8, that—inasmuch as mere *Skidmore* deference would seemingly be at issue—the degree of deference might be reduced by the fact that the agency's earlier position was different. See *Skidmore* v. *Swift & Co.*, 323 U. S. 134 (1944); *United States*

[5] Contrary to JUSTICE STEVENS' contention, *post*, at 331 (opinion concurring in part and concurring in judgment), we do not "advanc[e]" this argument. We merely suggest that if one were to speculate upon congressional purposes, the best evidence for that would be found in the statute.

v. *Mead Corp.*, 533 U. S. 218 (2001); *Good Samaritan Hospital* v. *Shalala*, 508 U. S. 402, 417 (1993). But of course the agency's earlier position (which the dissent describes at some length, *post*, at 337–338, and finds preferable) is even more compromised, indeed deprived of all claim to deference, by the fact that it is no longer the agency's position.

The dissent also describes at great length the experience under the FDCA with respect to drugs and food and color additives. *Post*, at 339–342. Two points render the conclusion the dissent seeks to draw from that experience—that the pre-emption clause permits tort suits—unreliable. (1) It has not been established (as the dissent assumes) that no tort lawsuits are pre-empted by drug or additive approval under the FDCA. (2) If, as the dissent believes, the pre-emption clause permits tort lawsuits for medical devices just as they are (by hypothesis) permitted for drugs and additives; and if, as the dissent believes, Congress wanted the two regimes to be alike; Congress could have applied the pre-emption clause to the entire FDCA. It did not do so, but instead wrote a pre-emption clause that applies only to medical devices.

C

The Riegels contend that the duties underlying negligence, strict-liability, and implied-warranty claims are not pre-empted even if they impose "'requirements,'" because general common-law duties are not requirements maintained "'with respect to devices.'" Brief for Petitioner 34–36. Again, a majority of this Court suggested otherwise in *Lohr*. See 518 U. S., at 504–505 (opinion of BREYER, J.); *id.*, at 514 (opinion of O'Connor, J., joined by Rehnquist, C. J., and SCALIA and THOMAS, JJ.).[6] And with good reason. The

[6]The opinions joined by these five Justices dispose of the Riegels' assertion that *Lohr* held common-law duties were too general to qualify as duties "with respect to a device." The majority opinion in *Lohr* also disavowed this conclusion, for it stated that the Court did "not believe that

language of the statute does not bear the Riegels' reading. The MDA provides that no State "may establish or continue in effect *with respect to a device . . . any requirement*" relating to safety or effectiveness that is different from, or in addition to, federal requirements. §360k(a) (emphasis added). The Riegels' suit depends upon New York's "continu[ing] in effect" general tort duties "with respect to" Medtronic's catheter. Nothing in the statutory text suggests that the pre-empted state requirement must apply *only* to the relevant device, or only to medical devices and not to all products and all actions in general.

The Riegels' argument to the contrary rests on the text of an FDA regulation which states that the MDA's pre-emption clause does not extend to certain duties, including "[s]tate or local requirements of general applicability where the purpose of the requirement relates either to other products in addition to devices (e. g., requirements such as general electrical codes, and the Uniform Commercial Code (warranty of fitness)), or to unfair trade practices in which the requirements are not limited to devices." 21 CFR §808.1(d)(1). Even assuming that this regulation could play a role in defining the MDA's pre-emptive scope, it does not provide unambiguous support for the Riegels' position. The agency's reading of its own rule is entitled to substantial deference, see *Auer* v. *Robbins*, 519 U. S. 452, 461 (1997), and the FDA's view put forward in this case is that the regulation does not refer to general tort duties of care, such as those underlying the claims in this case that a device was designed, labeled, or manufactured in an unsafe or ineffective manner, Brief for United States as *Amicus Curiae* 27–28. That is so, according to the FDA, because the regulation excludes from pre-emption requirements that relate only incidentally to medical devices, but not other requirements. General tort

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[the MDA's] statutory and regulatory language necessarily precludes . . . 'general' state requirements from ever being pre-empted . . . ." 518 U. S., at 500.

duties of care, unlike fire codes or restrictions on trade practices, "directly regulate" the device itself, including its design. *Id.*, at 28. We find the agency's explanation less than compelling, since the same could be said of general requirements imposed by electrical codes, the Uniform Commercial Code, or unfair-trade-practice law, which the regulation specifically excludes from pre-emption.

Other portions of 21 CFR §808.1, however, support the agency's view that §808.1(d)(1) has no application to this case (though still failing to explain why electrical codes, the Uniform Commercial Code, or unfair-trade-practice requirements are different). Section 808.1(b) states that the MDA sets forth a "general rule" pre-empting state duties "having the force and effect of law (whether established by statute, ordinance, regulation, *or court decision*) . . . ." (Emphasis added.) This sentence is far more comprehensible under the FDA's view that §808.1(d)(1) has no application here than under the Riegels' view. We are aware of no duties established by court decision other than common-law duties, and we are aware of no common-law duties that relate solely to medical devices.

The Riegels' reading is also in tension with the regulation's statement that adulteration and misbranding claims are pre-empted when they "ha[ve] the effect of establishing a substantive requirement for a specific device, e. g., a specific labeling requirement" that is "different from, or in addition to," a federal requirement. §808.1(d)(6)(ii). Surely this means that the MDA would pre-empt a jury determination that the FDA-approved labeling for a pacemaker violated a state common-law requirement for additional warnings. The Riegels' reading of §808.1(d)(1), however, would allow a claim for tortious mislabeling to escape pre-emption so long as such a claim could also be brought against objects other than medical devices.

All in all, we think that §808.1(d)(1) can add nothing to our analysis but confusion. Neither accepting nor rejecting the

proposition that this regulation can properly be consulted to determine the statute's meaning; and neither accepting nor rejecting the FDA's distinction between general requirements that directly regulate and those that regulate only incidentally; the regulation fails to alter our interpretation of the text insofar as the outcome of this case is concerned.

IV

State requirements are pre-empted under the MDA only to the extent that they are "different from, or in addition to" the requirements imposed by federal law. §360k(a)(1). Thus, §360k does not prevent a State from providing a damages remedy for claims premised on a violation of FDA regulations; the state duties in such a case "parallel," rather than add to, federal requirements. *Lohr*, 518 U. S., at 495; see also *id.*, at 513 (O'Connor, J., concurring in part and dissenting in part). The District Court in this case recognized that parallel claims would not be pre-empted, see App. to Pet. for Cert. 70a–71a, but it interpreted the claims here to assert that Medtronic's device violated state tort law notwithstanding compliance with the relevant federal requirements, see *id.*, at 68a. Although the Riegels now argue that their lawsuit raises parallel claims, they made no such contention in their briefs before the Second Circuit, nor did they raise this argument in their petition for certiorari. We decline to address that argument in the first instance here.

* * *

For the foregoing reasons, the judgment of the Court of Appeals is

Affirmed.

JUSTICE STEVENS, concurring in part and concurring in the judgment.

The significance of the pre-emption provision in the Medical Device Amendments of 1976 (MDA), 21 U. S. C. §360k,

was not fully appreciated until many years after it was enacted. It is an example of a statute whose text and general objective cover territory not actually envisioned by its authors. In such cases we have frequently concluded that "it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79–80 (1998). Accordingly, while I agree with JUSTICE GINSBURG's description of the actual history and principal purpose of the pre-emption provision at issue in this case, *post*, at 335–342 (dissenting opinion), I am persuaded that its text does pre-empt state-law requirements that differ. I therefore write separately to add these few words about the MDA's history and the meaning of "requirements."

There is nothing in the preenactment history of the MDA suggesting that Congress thought state tort remedies had impeded the development of medical devices. Nor is there any evidence at all to suggest that Congress decided that the cost of injuries from Food and Drug Administration-approved medical devices was outweighed "by solicitude for those who would suffer without new medical devices if juries were allowed to apply the tort law of 50 States to all innovations." *Ante*, at 326 (opinion of the Court). That is a policy argument advanced by the Court, not by Congress. As JUSTICE GINSBURG persuasively explains, the overriding purpose of the legislation was to provide additional protection to consumers, not to withdraw existing protections. It was the then-recent development of state premarket regulatory regimes that explained the need for a provision pre-empting conflicting administrative rules. See *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 489 (1996) (plurality opinion) ("[W]hen Congress enacted §360k, it was primarily concerned with the problem of specific, conflicting state statutes and regulations rather than the general duties enforced by common-law actions").

But the language of the provision reaches beyond such regulatory regimes to encompass other types of "requirements." Because common-law rules administered by judges, like statutes and regulations, create and define legal obligations, some of them unquestionably qualify as "requirements."[1] See *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 522 (1992) (plurality opinion) ("[C]ommon-law damages actions of the sort raised by petitioner are premised on the existence of a legal duty, and it is difficult to say that such actions do not impose 'requirements or prohibitions.' . . . [I]t is the essence of the common law to enforce duties that are either affirmative *requirements* or negative *prohibitions*"). And although not all common-law rules qualify as "requirements,"[2] the Court correctly points out that five Justices in *Lohr* concluded that the common-law causes of action for negligence and strict liability at issue in that case imposed "requirements" that were pre-empted by federal require-

[1] The verdicts of juries who obey those rules, however, are not "requirements" of that kind. Juries apply rules, but do not make them. And while a jury's finding of liability may induce a defendant to alter its device or its label, this does not render the finding a "requirement" within the meaning of the MDA. "A requirement is a rule of law that must be obeyed; an event, such as a jury verdict, that merely motivates an optional decision is not a requirement." *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 445 (2005). It is for that reason that the MDA does not grant "'a single state jury'" any power whatsoever to set any standard that either conforms with or differs from a relevant federal standard. I do not agree with the colorful but inaccurate quotation in the Court's opinion, *ante*, at 325.

[2] See *Cipollone*, 505 U. S., at 523 (plurality opinion) (explaining that the fact that "the pre-emptive scope of §5(b) cannot be limited to positive enactments does not mean that that section pre-empts all common-law claims" and proceeding to analyze "each of petitioner's common-law claims to determine whether it is in fact pre-empted"); *Bates*, 544 U. S., at 443–444 (noting that a finding that "[7 U. S. C.] §136v(b) may pre-empt judge-made rules, as well as statutes and regulations, says nothing about the *scope* of that pre-emption," and proceeding to determine whether the particular common-law rules at issue in that case satisfied the conditions of pre-emption).

ments specific to a medical device. Moreover, I agree with the Court's cogent explanation of why the Riegels' claims are predicated on New York common-law duties that constitute requirements with respect to the device at issue that differ from federal requirements relating to safety and effectiveness. I therefore join the Court's judgment and all of its opinion except for Parts III–A and III–B.

JUSTICE GINSBURG, dissenting.

The Medical Device Amendments of 1976 (MDA or Act), 90 Stat. 539, as construed by the Court, cut deeply into a domain historically occupied by state law. The MDA's preemption clause, 21 U. S. C. §360k(a), the Court holds, spares medical device manufacturers from personal injury claims alleging flaws in a design or label once the application for the design or label has gained premarket approval from the Food and Drug Administration (FDA); a state damages remedy, the Court instructs, persists only for claims "premised on a violation of FDA regulations." *Ante*, at 330.[1] I dissent from today's constriction of state authority. Congress, in my view, did not intend §360k(a) to effect a radical curtailment of state common-law suits seeking compensation for injuries caused by defectively designed or labeled medical devices.

Congress' reason for enacting §360k(a) is evident. Until 1976, the Federal Government did not engage in premarket regulation of medical devices. Some States acted to fill the void by adopting their own regulatory systems for medical devices. Section 360k(a) responded to that state regulation, and particularly to California's system of premarket approval for medical devices, by preempting State initiatives absent FDA permission. See §360k(b).

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[1] The Court's holding does not reach an important issue outside the bounds of this case: the preemptive effect of §360k(a) where evidence of a medical device's defect comes to light only *after* the device receives premarket approval.

I

The "purpose of Congress is the ultimate touchstone of pre-emption analysis." *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 516 (1992) (internal quotation marks omitted). Courts have "long presumed that Congress does not cavalierly pre-empt state-law causes of action." *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 485 (1996).[2] Preemption analysis starts with the assumption that "the historic police powers of the States [a]re not to be superseded . . . unless that was the clear and manifest purpose of Congress." *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). "This assumption provides assurance that 'the federal-state balance' will not be disturbed unintentionally by Congress or unnecessarily by the courts." *Jones* v. *Rath Packing Co.*, 430 U. S. 519, 525 (1977) (citation omitted).

The presumption against preemption is heightened "where federal law is said to bar state action in fields of traditional state regulation." *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 655 (1995). Given the traditional "primacy of state regulation of matters of health and safety," *Lohr*, 518 U. S., at 485, courts assume "that state and local regulation related to [those] matters . . . can normally coexist with federal regulations," *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U. S. 707, 718 (1985).

Federal laws containing a preemption clause do not automatically escape the presumption against preemption. See *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 449 (2005); *Lohr*, 518 U. S., at 485. A preemption clause tells us that Congress intended to supersede or modify state law to some extent. In the absence of legislative precision, however, courts may face the task of determining the substance

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[2] In part, *Lohr* spoke for the Court, and in part, for a plurality. Unless otherwise indicated, citations in this opinion refer to portions of *Lohr* conveying the opinion of the Court.

and scope of Congress' displacement of state law. Where the text of a preemption clause is open to more than one plausible reading, courts ordinarily "accept the reading that disfavors pre-emption." *Bates*, 544 U. S., at 449.

II

The MDA's preemption clause states:

> "[N]o State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement—
>
> "(1) which is different from, or in addition to, any requirement applicable under this chapter to the device, and
>
> "(2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under this chapter." 21 U. S. C. §360k(a).

"Absent other indication," the Court states, "reference to a State's 'requirements' includes its common-law duties." *Ante*, at 324. Regarding the MDA, however, "other indication" is not "[a]bsent." Contextual examination of the Act convinces me that §360k(a)'s inclusion of the term "requirement" should not prompt a sweeping preemption of mine-run claims for relief under state tort law.[3]

A

Congress enacted the MDA "to provide for the safety and effectiveness of medical devices intended for human use."

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[3] The very next provision, §360k(b), allows States and their political subdivisions to apply for exemption from the requirements for medical devices set by the FDA when their own requirements are "more stringent" than federal standards or are necessitated by "compelling local conditions." This prescription indicates solicitude for state concerns, as embodied in legislation or regulation. But no more than §360k(a) itself does §360k(b) show that Congress homed in on state common-law suits and meant to deny injured parties recourse to them.

90 Stat. 539 (preamble).[4] A series of high-profile medical device failures that caused extensive injuries and loss of life propelled adoption of the MDA.[5] Conspicuous among these failures was the Dalkon Shield intrauterine device, used by approximately 2.2 million women in the United States between 1970 and 1974. See *In re Northern Dist. of Cal., Dalkon Shield IUD Prods. Liability Litigation*, 693 F. 2d 847, 848 (CA9 1982); *ante*, at 315. Aggressively promoted as a safe and effective form of birth control, the Dalkon Shield had been linked to 16 deaths and 25 miscarriages by the middle of 1975. H. R. Rep. No. 94–853, p. 8 (1976). By early 1976, "more than 500 lawsuits seeking compensatory and punitive damages totalling more than $400 million" had been filed. *Ibid.*[6] Given the publicity attending the Dalkon Shield litigation and Congress' awareness of the suits at the time the MDA was under consideration, I find infor-

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[4] Introducing the bill in the Senate, its sponsor explained: "The legislation is written so that the benefit of the doubt is always given to the consumer. After all it is the consumer who pays with his health and his life for medical device malfunctions." 121 Cong. Rec. 10688 (1975) (remarks of Sen. Kennedy).

[5] See, *e. g.*, H. R. Rep. No. 94–853, p. 8 (1976) ("Significant defects in cardiac pacemakers have necessitated 34 voluntary recalls of pacemakers, involving 23,000 units, since 1972."); S. Rep. No. 94–33, p. 6 (1975) ("Some 10,000 injuries were recorded, of which 731 resulted in death. For example, 512 deaths and 300 injuries were attributed to heart valves; 89 deaths and 186 injuries to heart pacemakers; 10 deaths and 8,000 injuries to intrauterine devices."); 122 Cong. Rec. 5859 (1976) (remarks of Rep. Waxman) ("A 10-year FDA death-certificate search found over 850 deaths tied directly to medical devices."); 121 *id.*, at 10689–10690 (remarks of Sen. Nelson). See also *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 476 (1996).

[6] The Dalkon Shield was ultimately linked to "thousands of serious injuries to otherwise healthy women." Vladeck, Preemption and Regulatory Failure, 33 Pepperdine L. Rev. 95, 103 (2005). By October 1984, the manufacturer had settled or litigated approximately 7,700 Dalkon Shield cases. R. Sobol, Bending the Law: The Story of the Dalkon Shield Bankruptcy 23 (1991).

mative the absence of any sign of a legislative design to preempt state common-law tort actions.[7]

The Court recognizes that "§360k does not prevent a State from providing a damages remedy for claims premised on a violation of FDA regulations." *Ante*, at 330. That remedy, although important, does not help consumers injured by devices that receive FDA approval but nevertheless prove unsafe. The MDA's failure to create any federal compensatory remedy for such consumers further suggests that Congress did not intend broadly to preempt state common-law suits grounded on allegations independent of FDA requirements. It is "difficult to believe that Congress would, without comment, remove all means of judicial recourse" for large numbers of consumers injured by defective medical devices. *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 251 (1984).

The former chief counsel to the FDA explained:

> "FDA's view is that FDA product approval and state tort liability usually operate independently, each providing a significant, yet distinct, layer of consumer protection. FDA regulation of a device cannot anticipate and protect against all safety risks to individual consumers. Even the most thorough regulation of a product such as a critical medical device may fail to identify potential problems presented by the product. Regulation cannot

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[7] "[N]othing in the hearings, the Committee Reports, or the debates," the *Lohr* plurality noted, "suggest[ed] that any proponent of the legislation intended a sweeping pre-emption of traditional common-law remedies against manufacturers and distributors of defective devices. If Congress intended such a result, its failure even to hint at it is spectacularly odd, particularly since Members of both Houses were acutely aware of ongoing product liability litigation." 518 U. S., at 491. See also Adler & Mann, Preemption and Medical Devices: The Courts Run Amok, 59 Mo. L. Rev. 895, 925 (1994) ("To the extent that Congress mentioned common law tort claims, it was not to criticize them or to suggest that they needed to be barred once a federal regulation was in place. Rather, it was to note how they demonstrated that *additional* protections for consumers were needed.").

> protect against all possible injuries that might result from use of a device over time. Preemption of all such claims would result in the loss of a significant layer of consumer protection . . . ." Porter, The *Lohr* Decision: FDA Perspective and Position, 52 Food & Drug L. J. 7, 11 (1997).

Cf. Brief for United States as *Amicus Curiae* on Pet. for Cert. in *Smiths Industries Medical Systems, Inc.* v. *Kernats*, O. T. 1997, No. 96–1405, pp. 17–18; Dept. of Health and Human Services, Public Health Service, Advisory Opinion, Docket No. 83A–0140/AP, Letter from J. Hile, Associate Comm'r for Regulatory Affairs, to National Women's Health Network (Mar. 8, 1984).[8] The Court's construction of §360k(a) has the "perverse effect" of granting broad immunity "to an entire industry that, in the judgment of Congress, needed more stringent regulation," *Lohr*, 518 U. S., at 487 (plurality opinion), not exemption from liability in tort litigation.

The MDA does grant the FDA authority to order certain remedial action if, *inter alia*, it concludes that a device "pre-

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[8]The FDA recently announced a new position in an *amicus* brief. See Brief for United States as *Amicus Curiae* 16–24. An *amicus* brief interpreting a statute is entitled, at most, to deference under *Skidmore* v. *Swift & Co.*, 323 U. S. 134 (1944). See *United States* v. *Mead Corp.*, 533 U. S. 218, 229–233 (2001). The weight accorded to an agency position under *Skidmore* "depend[s] upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." 323 U. S., at 140. See also *Mead*, 533 U. S., at 228 (courts consider, *inter alia*, the "consistency" and "persuasiveness" of an agency's position); *Good Samaritan Hospital* v. *Shalala*, 508 U. S. 402, 417 (1993) ("[T]he consistency of an agency's position is a factor in assessing the weight that position is due."). Because the FDA's long-held view on the limited preemptive effect of §360k(a) better comports with the presumption against preemption of state health and safety protections, as well as the purpose and history of the MDA, the FDA's new position is entitled to little weight.

sents an unreasonable risk of substantial harm to the public health" and that notice of the defect "would not by itself be sufficient to eliminate the unreasonable risk." 21 U. S. C. §360h(b)(1)(A). Thus the FDA may order the manufacturer to repair the device, replace it, refund the purchase price, cease distribution, or recall the device. §360h(b)(2), (e). The prospect of ameliorative action by the FDA, however, lends no support to the conclusion that Congress intended largely to preempt state common-law suits. Quite the opposite: Section 360h(d) states that "[c]ompliance with an order issued under this section shall not relieve any person from liability under Federal or State law." That provision anticipates "[court-awarded] damages for economic loss" from which the value of any FDA-ordered remedy would be subtracted. *Ibid.*[9]

B

Congress enacted the MDA after decades of regulating drugs and food and color additives under the Federal Food, Drug, and Cosmetic Act (FDCA), 52 Stat. 1040, as amended, 21 U. S. C. §301 *et seq.* The FDCA contains no preemption clause, and thus the Court's interpretation of §360k(a) has no bearing on tort suits involving drugs and additives. But §360k(a)'s confinement to medical devices hardly renders irrelevant to the proper construction of the MDA's preemption provision the long history of federal and state controls over drugs and additives in the interest of public health and welfare. Congress' experience regulating drugs and additives informed, and in part provided the model for, its regulation of medical devices. I therefore turn to an examination of that experience.

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[9]The Court regards §360h(d) as unenlightening because it "could not possibly mean that *all* state-law claims are not pre-empted" and "provides no guidance as to which state-law claims are pre-empted and which are not." *Ante*, at 325, n. 4. Given the presumption against preemption operative even in construing a preemption clause, see *supra*, at 334–335, the perceived lack of "guidance" should cut against Medtronic, not in its favor.

Starting in 1938, the FDCA required that new drugs undergo preclearance by the FDA before they could be marketed. See §505, 52 Stat. 1052. Nothing in the FDCA's text or legislative history suggested that FDA preclearance would immunize drug manufacturers from common-law tort suits.[10]

By the time Congress enacted the MDA in 1976, state common-law claims for drug labeling and design defects had continued unabated despite nearly four decades of FDA regulation.[11] Congress' inclusion of a preemption clause in the MDA was not motivated by concern that similar state tort actions could be mounted regarding medical devices.[12]

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[10] To the contrary, the bill did not need to create a federal claim for damages, witnesses testified, because "[a] common-law right of action exist[ed]." Hearings on S. 1944 before a Subcommittee of the Senate Committee on Commerce, 73d Cong., 2d Sess., 400 (1933) (statement of W. A. Hines). See also *id.*, at 403 (statement of J. A. Ladds) ("This act should not attempt to modify or restate the common law with respect to personal injuries.").

[11] Most defendants, it appears, raised no preemption defense to state tort suits involving FDA-approved drugs. See, *e. g.*, *Salmon* v. *Parke, Davis & Co.*, 520 F. 2d 1359 (CA4 1975) (North Carolina law); *Reyes* v. *Wyeth Labs.*, 498 F. 2d 1264 (CA5 1974) (Texas law); *Hoffman* v. *Sterling Drug, Inc.*, 485 F. 2d 132 (CA3 1973) (Pennsylvania law); *Singer* v. *Sterling Drug, Inc.*, 461 F. 2d 288 (CA7 1972) (Indiana law); *McCue* v. *Norwich Pharmacal Co.*, 453 F. 2d 1033 (CA1 1972) (New Hampshire law); *Basko* v. *Sterling Drug, Inc.*, 416 F. 2d 417 (CA2 1969) (Connecticut law); *Parke-Davis & Co.* v. *Stromsodt*, 411 F. 2d 1390 (CA8 1969) (North Dakota law); *Davis* v. *Wyeth Labs., Inc.*, 399 F. 2d 121 (CA9 1968) (Montana law); *Roginsky* v. *Richardson-Merrell, Inc.*, 378 F. 2d 832 (CA2 1967) (New York law); *Cunningham* v. *Charles Pfizer & Co.*, 532 P. 2d 1377 (Okla. 1974); *Stevens* v. *Parke, Davis & Co.*, 9 Cal. 3d 51, 507 P. 2d 653 (1973); *Bine* v. *Sterling Drug, Inc.*, 422 S. W. 2d 623 (Mo. 1968) *(per curiam)*. In the few cases in which courts noted that defendants had interposed a preemption plea, the defense was unsuccessful. See, *e. g.*, *Herman* v. *Smith, Kline & French Labs.*, 286 F. Supp. 694 (ED Wis. 1968). See also *infra*, at 343–344, n. 16 (decisions after 1976).

[12] See Leflar & Adler, The Preemption Pentad: Federal Preemption of Products Liability Claims After *Medtronic*, 64 Tenn. L. Rev. 691, 704, n. 71 (1997) ("Surely a furor would have been aroused by the very suggestion

Rather, Congress included §360k(a) and (b) to empower the FDA to exercise control over state premarket approval systems installed at a time when there was no preclearance at the federal level. See *supra*, at 335, and n. 3; *infra*, at 342, and n. 14.

Between 1938 and 1976, Congress enacted a series of premarket approval requirements, first for drugs, then for additives. Premarket control, as already noted, commenced with drugs in 1938. In 1958, Congress required premarket approval for food additives. Food Additives Amendment, §4, 72 Stat. 1785, as amended, 21 U. S. C. §348. In 1960, it required premarket approval for color additives. Color Additive Amendments, §103(b), 74 Stat. 399, as amended, 21 U. S. C. §379e. In 1962, it expanded the premarket approval process for new drugs to include review for effectiveness. Drug Amendments, §102, 76 Stat. 781, as amended, 21 U. S. C. §§321, 355. And in 1968, it required premarket approval for new animal drugs. Animal Drug Amendments, §101(b), 82 Stat. 343, as amended, 21 U. S. C. §360b. None of these Acts contained a preemption clause.

The measures just listed, like the MDA, were all enacted with common-law personal injury litigation over defective products a prominent part of the legal landscape.[13] At the

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that . . . medical devices should receive an exemption from products liability litigation while new drugs, subject to similar regulatory scrutiny from the same agency, should remain under the standard tort law regime."); Porter, The *Lohr* Decision: FDA Perspective and Position, 52 Food & Drug L. J. 7, 11 (1997) (With preemption, the "FDA's regulation of devices would have been accorded an entirely different weight in private tort litigation than its counterpart regulation of drugs and biologics. This disparity is neither justified nor appropriate, nor does the agency believe it was intended by Congress . . . .").

[13] The Drug Amendments of 1962 reiterated Congress' intent not to preempt claims relying on state law: "Nothing in the amendments . . . shall be construed as invalidating any provision of State law which would be valid in the absence of such amendments unless there is a direct and positive conflict between such amendments and such provision of State law." §202, 76 Stat. 793.

time of each enactment, no state regulations required premarket approval of the drugs or additives in question, so no preemption clause was needed as a check against potentially conflicting state regulatory regimes. See Brief for Sen. Edward M. Kennedy et al. as *Amici Curiae* 10.

A different situation existed as to medical devices when Congress developed and passed the MDA. As the House Report observed:

> "In the absence of effective Federal regulation of medical devices, some States have established their own programs. The most comprehensive State regulation of which the Committee is aware is that of California, which in 1970 adopted the Sherman Food, Drug, and Cosmetic Law. This law requires premarket approval of all new medical devices, requires compliance of device manufacturers with good manufacturing practices and authorizes inspection of establishments which manufacture devices. Implementation of the Sherman Law has resulted in the *requirement* that intrauterine devices are subject to premarket clearance in California." H. R. Rep. No. 94–853, p. 45 (emphasis added).[14]

In sum, state premarket regulation of medical devices, not any design to suppress tort suits, accounts for Congress' inclusion of a preemption clause in the MDA; no such clause figures in earlier federal laws regulating drugs and additives, for States had not installed comparable control regimes in those areas.

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[14] Congress featured California's regulatory system in its discussion of §360k(a), but it also identified California's system as a prime candidate for an exemption from preemption under §360k(b). "[R]equirements imposed under the California statute," the House Report noted, "serve as an example of requirements that the Secretary should authorize to be continued (provided any application submitted by a State meets requirements pursuant to the reported bill)." H. R. Rep. No. 94–853, p. 46. Thus Congress sought not to terminate all state premarket approval systems, but rather to place those systems under the controlling authority of the FDA.

C

Congress' experience regulating drugs also casts doubt on Medtronic's policy arguments for reading §360k(a) to preempt state tort claims. Section 360k(a) must preempt state common-law suits, Medtronic contends, because Congress would not have wanted state juries to second-guess the FDA's finding that a medical device is safe and effective when used as directed. Brief for Respondent 42–49. The Court is similarly minded. *Ante*, at 324–325.

But the process for approving new drugs is at least as rigorous as the premarket approval process for medical devices.[15] Courts that have considered the question have overwhelmingly held that FDA approval of a new drug application does not preempt state tort suits.[16] Decades of drug

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[15] The process for approving a new drug begins with preclinical laboratory and animal testing. The sponsor of the new drug then submits an investigational new drug application seeking FDA approval to test the drug on humans. See 21 U. S. C. §355(i) (2000 ed. and Supp. V); 21 CFR §312.1 *et seq.* (2007). Clinical trials generally proceed in three phases involving successively larger groups of patients: 20 to 80 subjects in phase I; no more than several hundred subjects in phase II; and several hundred to several thousand subjects in phase III. 21 CFR §312.21. After completing the clinical trials, the sponsor files a new drug application containing, *inter alia*, "full reports of investigations" showing whether the "drug is safe for use and . . . effective"; the drug's composition; a description of the drug's manufacturing, processing, and packaging; and the proposed labeling for the drug. 21 U. S. C. §355(b)(1) (2000 ed., Supp. V).

[16] See, *e. g.*, *Tobin* v. *Astra Pharmaceutical Prods., Inc.*, 993 F. 2d 528, 537–538 (CA6 1993); *Hill* v. *Searle Labs., Div. of Searle Pharmaceuticals, Inc.*, 884 F. 2d 1064, 1068 (CA8 1989); *In re Vioxx Prods. Liability Litigation*, 501 F. Supp. 2d 776, 788–789 (ED La. 2007); *In re Zyprexa Prods. Liability Litigation*, 489 F. Supp. 2d 230, 275–278 (EDNY 2007); *Weiss* v. *Fujisawa Pharmaceutical Co.*, 464 F. Supp. 2d 666, 676 (ED Ky. 2006); *Perry* v. *Novartis Pharma. Corp.*, 456 F. Supp. 2d 678, 685–687 (ED Pa. 2006); *McNellis* v. *Pfizer, Inc.*, No. Civ. 05–1286 (JBS), 2006 WL 2819046, *5 (D. N. J., Sept. 29, 2006); *Jackson* v. *Pfizer, Inc.*, 432 F. Supp. 2d 964, 968 (Neb. 2006); *Laisure-Radke* v. *Par Pharmaceutical, Inc.*, 426 F. Supp. 2d 1163, 1169 (WD Wash. 2006); *Witczak* v. *Pfizer, Inc.*, 377 F. Supp. 2d 726, 732 (Minn. 2005); *Zikis* v. *Pfizer, Inc.*, No. 04 C 8104, 2005 WL 1126909,

regulation thus indicate, contrary to Medtronic's argument, that Congress did not regard FDA regulation and state tort claims as mutually exclusive.

III

Refusing to read §360k(a) as an automatic bar to state common-law tort claims would hardly render the FDA's premarket approval of Medtronic's medical device application irrelevant to the instant suit. First, a "pre-emption provision, by itself, does not foreclose (through negative implication) any possibility of implied conflict preemption." *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, 869 (2000) (brackets and internal quotation marks omitted). See also *Freightliner Corp.* v. *Myrick*, 514 U. S. 280, 288–289 (1995). Accordingly, a medical device manufacturer may have a dis-

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*3 (ND Ill., May 9, 2005); *Cartwright* v. *Pfizer, Inc.*, 369 F. Supp. 2d 876, 885–886 (ED Tex. 2005); *Eve* v. *Sandoz Pharmaceutical Corp.*, No. IP 98–1429–C–Y/S, 2002 WL 181972, *1 (SD Ind., Jan. 28, 2002); *Caraker* v. *Sandoz Pharmaceuticals Corp.*, 172 F. Supp. 2d 1018, 1044 (SD Ill. 2001); *Motus* v. *Pfizer, Inc.*, 127 F. Supp. 2d 1085, 1087 (CD Cal. 2000); *Kociemba* v. *G. D. Searle & Co.*, 680 F. Supp. 1293, 1299–1300 (Minn. 1988). But see 71 Fed. Reg. 3933–3936 (2006) (preamble to labeling regulations discussing the FDA's recently adopted view that federal drug labeling requirements preempt conflicting state laws); *In re Bextra and Celebrex Marketing Sales Practices and Prod. Liability Litigation*, No. M: 05–1699 CRB, 2006 WL 2374742, *10 (ND Cal., Aug. 16, 2006); *Colacicco* v. *Apotex, Inc.*, 432 F. Supp. 2d 514, 537–538 (ED Pa. 2006); *Needleman* v. *Pfizer Inc.*, No. Civ. A. 3:03–CV–3074–N, 2004 WL 1773697, *5 (ND Tex., Aug. 6, 2004); *Dusek* v. *Pfizer Inc.*, No. Civ. A. H–02–3559, 2004 WL 2191804, *10 (SD Tex., Feb. 20, 2004). But cf. 73 Fed. Reg. 2853 (2008) (preamble to proposed rule).

This Court will soon address the issue in *Levine* v. *Wyeth*, 183 Vt. 76, 944 A. 2d 179 (2006), cert. granted, *post*, p. 1161. The question presented in that case is: "Whether the prescription drug labeling judgments imposed on manufacturers by the Food and Drug Administration ('FDA') pursuant to FDA's comprehensive safety and efficacy authority under the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. §301 *et seq.*, preempt state law product liability claims premised on the theory that different labeling judgments were necessary to make drugs reasonably safe for use." Pet. for Cert. in *Wyeth* v. *Levine*, O. T. 2007, No. 06–1249, p. i.

positive defense if it can identify an actual conflict between the plaintiff's theory of the case and the FDA's premarket approval of the device in question. As currently postured, this case presents no occasion to take up this issue for Medtronic relies exclusively on §360k(a) and does not argue conflict preemption.

Second, a medical device manufacturer may be entitled to interpose a regulatory compliance defense based on the FDA's approval of the premarket application. Most States do not treat regulatory compliance as dispositive, but regard it as one factor to be taken into account by the jury. See Sharkey, Federalism in Action: FDA Regulatory Preemption in Pharmaceutical Cases in State Versus Federal Courts, 15 J. Law & Pol'y 1013, 1024 (2007). See also Restatement (Third) of Torts §16(a) (Proposed Final Draft No. 1, Apr. 6, 2005). In those States, a manufacturer could present the FDA's approval of its medical device as evidence that it used due care in the design and labeling of the product.

The Court's broad reading of §360k(a) saves the manufacturer from any need to urge these defenses. Instead, regardless of the strength of a plaintiff's case, suits will be barred *ab initio*. The constriction of state authority ordered today was not mandated by Congress and is at odds with the MDA's central purpose: to protect consumer safety.

* * *

For the reasons stated, I would hold that §360k(a) does not preempt Riegel's suit. I would therefore reverse the judgment of the Court of Appeals in relevant part.

Syllabus

PRESTON *v.* FERRER

CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

No. 06–1463. Argued January 14, 2008—Decided February 20, 2008

A contract between respondent Ferrer, who appears on television as "Judge Alex," and petitioner Preston, an entertainment industry attorney, requires arbitration of "any dispute . . . relating to the [contract's] terms . . . or the breach, validity, or legality thereof . . . in accordance with [American Arbitration Association (AAA)] rules." Preston invoked this provision to gain fees allegedly due under the contract. Ferrer thereupon petitioned the California Labor Commissioner (Labor Commissioner) for a determination that the contract was invalid and unenforceable under California's Talent Agencies Act (TAA) because Preston had acted as a talent agent without the required license. After the Labor Commissioner's hearing officer denied Ferrer's motion to stay the arbitration, Ferrer filed suit in state court seeking to enjoin arbitration, and Preston moved to compel arbitration. The court denied Preston's motion and enjoined him from proceeding before the arbitrator unless and until the Labor Commissioner determined she lacked jurisdiction over the dispute. While Preston's appeal was pending, this Court held, in *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440, 446, that challenges to the validity of a contract requiring arbitration of disputes ordinarily "should . . . be considered by an arbitrator, not a court." Affirming the judgment below, the California Court of Appeal held that the TAA vested the Labor Commissioner with exclusive original jurisdiction over the dispute, and that *Buckeye* was inapposite because it did not involve an administrative agency with exclusive jurisdiction over a disputed issue.

Held: When parties agree to arbitrate all questions arising under a contract, the Federal Arbitration Act (FAA), 9 U. S. C. §1 *et seq.*, supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative. Pp. 352–363.

(a) The issue is not whether the FAA preempts the TAA wholesale. Instead, the question is simply who decides—the arbitrator or the Labor Commissioner—whether Preston acted as an unlicensed talent agent in violation of the TAA, as Ferrer claims, or as a personal manager not governed by the TAA, as Preston contends. P. 352.

(b) FAA §2 "declare[s] a national policy favoring arbitration" when the parties contract for that mode of dispute resolution. *Southland Corp.* v. *Keating*, 465 U. S. 1, 10. That national policy "appli[es] in state

as well as federal courts" and "foreclose[s] state legislative attempts to undercut the enforceability of arbitration agreements." *Id.*, at 16. The FAA's displacement of conflicting state law has been repeatedly reaffirmed. See, *e. g.*, *Buckeye*, 546 U. S., at 445–446; *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265, 272. A recurring question under §2 is who should decide whether "grounds . . . exist at law or in equity" to invalidate an arbitration agreement. In *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395, 403–404, which originated in federal court, this Court held that attacks on an entire contract's validity, as distinct from attacks on the arbitration clause alone, are within the arbitrator's ken. *Buckeye* held that the same rule applies in state court. See 546 U. S., at 446.

Buckeye largely, if not entirely, resolves the present dispute. The contract at issue clearly "evidenc[ed] a transaction involving commerce" under §2, and Ferrer has never disputed that the contract's written arbitration provision falls within §2's purview. Ferrer sought invalidation of the contract as a whole. He made no discrete challenge to the validity of the arbitration clause, and thus sought to override that clause on a ground *Buckeye* requires the arbitrator to decide in the first instance. Pp. 352–354.

(c) Ferrer attempts to distinguish *Buckeye*, urging that the TAA merely requires exhaustion of administrative remedies before the parties proceed to arbitration. This argument is unconvincing. Pp. 354–359.

(1) Procedural prescriptions of the TAA conflict with the FAA's dispute resolution regime in two basic respects: (1) One TAA provision grants the Labor Commissioner exclusive jurisdiction to decide an issue that the parties agreed to arbitrate, see *Buckeye*, 546 U. S., at 446; (2) another imposes prerequisites to enforcement of an arbitration agreement that are not applicable to contracts generally, see *Doctor's Associates, Inc.* v. *Casarotto*, 517 U. S. 681, 687. Pp. 354–356.

(2) Ferrer contends that the TAA is compatible with the FAA because the TAA provision vesting exclusive jurisdiction in the Labor Commissioner merely postpones arbitration. That position is contrary to the one Ferrer took in the California courts and does not withstand examination. Arbitration, if it ever occurred following the Labor Commissioner's decision, would likely be long delayed, in contravention of Congress' intent "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 22. Pp. 356–358.

(3) Ferrer contends that the conflict between the arbitration clause and the TAA should be overlooked because Labor Commissioner pro-

Syllabus

ceedings are administrative rather than judicial. The Court rejected a similar argument in *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 28–29. Pp. 358–359.

(d) Ferrer's reliance on *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, is misplaced for two reasons. First, arbitration was stayed in *Volt* to accommodate litigation involving third parties who were strangers to the arbitration agreement. Because the contract at issue in *Volt* did not address the order of proceedings and included a choice-of-law clause adopting California law, the *Volt* Court recognized as the gap filler a California statute authorizing the state court to stay either third-party court proceedings or arbitration proceedings to avoid the possibility of conflicting rulings on a common issue. Here, in contrast, the arbitration clause speaks to the matter in controversy; both parties are bound by the arbitration agreement; the question of Preston's status as a talent agent relates to the validity or legality of the contract; there is no risk that related litigation will yield conflicting rulings on common issues; and there is no other procedural void for the choice-of-law clause to fill. Second, the Court is guided by its decision in *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*, 514 U. S. 52. Although the *Volt* contract provided for arbitration in accordance with AAA rules, 489 U. S., at 470, n. 1, Volt never argued that incorporation of those rules by reference trumped the contract's choice-of-law clause, so this Court never addressed the import of such incorporation. In *Mastrobuono*, the Court reached that open question, declaring that the "best way to harmonize" a New York choice-of-law clause and a clause providing for arbitration in accordance with privately promulgated arbitration rules was to read the choice-of-law clause "to encompass substantive principles that New York courts would apply, but not to include [New York's] special rules limiting [arbitrators'] authority." 514 U. S., at 63–64. Similarly here, the "best way to harmonize" the Ferrer-Preston contract's adoption of the AAA rules and its selection of California law is to read the latter to encompass prescriptions governing the parties' substantive rights and obligations, but not the State's "special rules limiting [arbitrators'] authority." *Ibid.* Pp. 360–363.

145 Cal. App. 4th 440, 51 Cal. Rptr. 3d 628, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, SOUTER, BREYER, and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 363.

Joseph D. Schleimer argued the cause for petitioner. With him on the briefs was *Kenneth D. Freundlich*.

G. Eric Brunstad, Jr., argued the cause for respondent. With him on the brief were *Rheba Rutkowski*, *Brian R. Hole*, *Collin O'Connor Udell*, and *Robert M. Dudnik*.*

JUSTICE GINSBURG delivered the opinion of the Court.

As this Court recognized in *Southland Corp.* v. *Keating*, 465 U. S. 1 (1984), the Federal Arbitration Act (FAA or Act), 9 U. S. C. §1 *et seq.* (2000 ed. and Supp. V), establishes a national policy favoring arbitration when the parties contract for that mode of dispute resolution. The Act, which rests on Congress' authority under the Commerce Clause, supplies not simply a procedural framework applicable in federal courts; it also calls for the application, in state as well as federal courts, of federal substantive law regarding arbitration. 465 U. S., at 16. More recently, in *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440 (2006), the Court clarified that, when parties agree to arbitrate all disputes arising under their contract, questions concerning the validity of the entire contract are to be resolved by the arbitrator in the first instance, not by a federal or state court.

The instant petition presents the following question: Does the FAA override not only state statutes that refer certain state-law controversies initially to a judicial forum, but also state statutes that refer certain disputes initially to an administrative agency? We hold today that, when parties agree to arbitrate all questions arising under a contract, state laws lodging primary jurisdiction in another forum,

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America by *Gene C. Schaerr*, *Steffen N. Johnson*, *Robin S. Conrad*, *Amar D. Sarwal*, and *Linda T. Coberly*; for CTIA–The Wireless Association by *Andrew J. Pincus*, *Evan M. Tager*, *David M. Gossett*, and *Michael F. Altschul*; for Macy's Group Inc. by *Glen D. Nager* and *C. Kevin Marshall*; and for the Pacific Legal Foundation by *Deborah J. La Fetra* and *Timothy Sandefur*.

Briefs of *amici curiae* urging affirmance were filed for the Screen Actors Guild, Inc., et al. by *Duncan Crabtree-Ireland* and *Danielle S. Van Lier*; and for the William Morris Agency by *David J. Bederman*.

whether judicial or administrative, are superseded by the FAA.

I

This case concerns a contract between respondent Alex E. Ferrer, a former Florida trial court judge who currently appears as "Judge Alex" on a Fox television network program, and petitioner Arnold M. Preston, a California attorney who renders services to persons in the entertainment industry. Seeking fees allegedly due under the contract, Preston invoked the parties' agreement to arbitrate "any dispute . . . relating to the terms of [the contract] or the breach, validity, or legality thereof . . . in accordance with the rules [of the American Arbitration Association]." App. 18.

Preston's demand for arbitration, made in June 2005, was countered a month later by Ferrer's petition to the California Labor Commissioner charging that the contract was invalid and unenforceable under the California Talent Agencies Act (TAA), Cal. Lab. Code Ann. §1700 *et seq.* (West 2003 and Supp. 2008). Ferrer asserted that Preston acted as a talent agent without the license required by the TAA, and that Preston's unlicensed status rendered the entire contract void.[1]

The Labor Commissioner's hearing officer, in November 2005, determined that Ferrer had stated a "colorable basis for exercise of the Labor Commissioner's jurisdiction." App. 33. The officer denied Ferrer's motion to stay the arbitration, however, on the ground that the Labor Commissioner lacked authority to order such relief. Ferrer then filed suit in the Los Angeles Superior Court, seeking a declaration that the controversy between the parties "arising from the [c]ontract, including in particular the issue of the validity of the [c]ontract, is not subject to arbitration." *Id.*,

[1] The TAA uses the term "talent agency" to describe both corporations and individual talent agents. We use the terms "talent agent" and "talent agency" interchangeably.

at 29. As interim relief, Ferrer sought an injunction restraining Preston from proceeding before the arbitrator. Preston responded by moving to compel arbitration.

In December 2005, the Superior Court denied Preston's motion to compel arbitration and enjoined Preston from proceeding before the arbitrator "unless and until the Labor Commissioner determines that . . . she is without jurisdiction over the disputes between Preston and Ferrer." No. BC342454 (Dec. 7, 2005), App. C to Pet. for Cert. 18a, 26a–27a. During the pendency of Preston's appeal from the Superior Court's decision, this Court reaffirmed, in *Buckeye*, that challenges to the validity of a contract providing for arbitration ordinarily "should . . . be considered by an arbitrator, not a court." 546 U. S., at 446.

In a 2-to-1 decision issued in November 2006, the California Court of Appeal affirmed the Superior Court's judgment. The appeals court held that the relevant provision of the TAA, Cal. Lab. Code Ann. §1700.44(a) (West 2003), vests "exclusive original jurisdiction" over the dispute in the Labor Commissioner. 145 Cal. App. 4th 440, 447, 51 Cal. Rptr. 3d 628, 634. *Buckeye* is "inapposite," the court said, because that case "did not involve an administrative agency with exclusive jurisdiction over a disputed issue." 145 Cal. App. 4th, at 447, 51 Cal. Rptr. 3d, at 634. The dissenting judge, in contrast, viewed *Buckeye* as controlling; she reasoned that the FAA called for immediate recognition and enforcement of the parties' agreement to arbitrate and afforded no basis for distinguishing prior resort to a state administrative agency from prior resort to a state court. 145 Cal. App. 4th, at 450–451, 51 Cal. Rptr. 3d, at 636–637 (Vogel, J., dissenting).

The California Supreme Court denied Preston's petition for review. No. S149190 (Feb. 14, 2007), 2007 Cal. LEXIS 1539, App. A to Pet. for Cert. 1a. We granted certiorari to determine whether the FAA overrides a state law vesting

initial adjudicatory authority in an administrative agency. 551 U. S. 1190 (2007).

II

An easily stated question underlies this controversy. Ferrer claims that Preston was a talent agent who operated without a license in violation of the TAA. Accordingly, he urges, the contract between the parties, purportedly for "personal management," is void, and Preston is entitled to no compensation for any services he rendered. Preston, on the other hand, maintains that he acted as a personal manager, not as a talent agent, hence his contract with Ferrer is not governed by the TAA and is both lawful and fully binding on the parties.

Because the contract between Ferrer and Preston provides that "any dispute . . . relating to the . . . validity, or legality," of the agreement "shall be submitted to arbitration," App. 18, Preston urges that Ferrer must litigate "his TAA defense in the arbitral forum," Reply Brief 31. Ferrer insists, however, that the "personal manager" or "talent agent" inquiry falls, under California law, within the exclusive original jurisdiction of the Labor Commissioner, and that the FAA does not displace the Commissioner's primary jurisdiction. Brief for Respondent 14, 30, 40–44.

The dispositive issue, then, contrary to Ferrer's suggestion, is not whether the FAA preempts the TAA wholesale. See *id.*, at 44–48. The FAA plainly has no such destructive aim or effect. Instead, the question is simply who decides whether Preston acted as personal manager or as talent agent.

III

Section 2 of the FAA states:

> "A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforce-

> able, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. §2.

Section 2 "declare[s] a national policy favoring arbitration" of claims that parties contract to settle in that manner. *Southland Corp.*, 465 U. S., at 10. That national policy, we held in *Southland*, "appli[es] in state as well as federal courts" and "foreclose[s] state legislative attempts to undercut the enforceability of arbitration agreements." *Id.*, at 16. The FAA's displacement of conflicting state law is "now well-established," *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265, 272 (1995), and has been repeatedly reaffirmed, see, *e. g.*, *Buckeye*, 546 U. S., at 445–446; *Doctor's Associates, Inc.* v. *Casarotto*, 517 U. S. 681, 684–685 (1996); *Perry* v. *Thomas*, 482 U. S. 483, 489 (1987).[2]

A recurring question under §2 is who should decide whether "grounds . . . exist at law or in equity" to invalidate an arbitration agreement. In *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395, 403–404 (1967), we held that attacks on the validity of an entire contract, as distinct from attacks aimed at the arbitration clause, are within the arbitrator's ken.

The litigation in *Prima Paint* originated in federal court, but the same rule, we held in *Buckeye*, applies in state court. 546 U. S., at 447–448. The plaintiffs in *Buckeye* alleged that the contracts they signed, which contained arbitration clauses, were illegal under state law and void *ab initio*. *Id.*, at 443. Relying on *Southland*, we held that the plaintiffs' challenge was within the province of the arbitrator to decide. See 546 U. S., at 446.

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[2] Although Ferrer urges us to overrule *Southland*, he relies on the same arguments we considered and rejected in *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265 (1995). Compare Brief for Respondent 55–59 with Brief for Attorney General of Alabama et al. as *Amici Curiae* in *Allied-Bruce Terminix Cos.* v. *Dobson*, O. T. 1994, No. 93–1001, pp. 11–19. Adhering to precedent, we do not take up Ferrer's invitation to overrule *Southland*.

Buckeye largely, if not entirely, resolves the dispute before us. The contract between Preston and Ferrer clearly "evidenc[ed] a transaction involving commerce," 9 U. S. C. §2, and Ferrer has never disputed that the written arbitration provision in the contract falls within the purview of §2. Moreover, Ferrer sought invalidation of the contract as a whole. In the proceedings below, he made no discrete challenge to the validity of the arbitration clause. See 145 Cal. App. 4th, at 449, 51 Cal. Rptr. 3d, at 635 (Vogel, J., dissenting).[3] Ferrer thus urged the Labor Commissioner and California courts to override the contract's arbitration clause on a ground that *Buckeye* requires the arbitrator to decide in the first instance.

IV

Ferrer attempts to distinguish *Buckeye* by arguing that the TAA merely requires exhaustion of administrative remedies before the parties proceed to arbitration. We reject that argument.

A

The TAA regulates talent agents and talent agency agreements. "Talent agency" is defined, with exceptions not relevant here, as "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists." Cal. Lab. Code Ann. §1700.4(a) (West 2003). The definition

[3] Ferrer's petition to the Labor Commissioner sought a declaration that the contract "is void under the [TAA]." App. 23. His complaint in Superior Court seeking to enjoin arbitration asserted: "[T]he [c]ontract is void by reason of [Preston's] attempt to procure employment for [Ferrer] in violation of the [TAA]," and "the [c]ontract's arbitration clause does not vest authority in an arbitrator to determine whether the contract is void." *Id.*, at 27. His brief in the appeals court stated: "Ferrer does not contend that the arbitration clause in the [c]ontract was procured by fraud. Ferrer contends that Preston unlawfully acted as an unlicensed talent agent and hence cannot enforce the [c]ontract." Brief for Respondent in No. B188997, p. 18.

"does not cover other services for which artists often contract, such as personal and career management (i. e., advice, direction, coordination, and oversight with respect to an artist's career or personal or financial affairs)." *Styne* v. *Stevens*, 26 Cal. 4th 42, 51, 26 P. 3d 343, 349 (2001) (emphasis deleted). The TAA requires talent agents to procure a license from the Labor Commissioner. § 1700.5. "In furtherance of the [TAA's] protective aims, an unlicensed person's contract with an artist to provide the services of a talent agency is illegal and void." *Ibid.*[4]

Section 1700.44(a) of the TAA states:

> "In cases of controversy arising under this chapter, the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo."

Absent a notice of appeal filed within ten days, the Labor Commissioner's determination becomes final and binding on the parties. *REO Broadcasting Consultants* v. *Martin*, 69 Cal. App. 4th 489, 495, 81 Cal. Rptr. 2d 639, 642–643 (1999).[5]

The TAA permits arbitration in lieu of proceeding before the Labor Commissioner if an arbitration provision "in a contract between a talent agency and [an artist]" both "provides for reasonable notice to the Labor Commissioner of the time and place of all arbitration hearings" and gives the Com-

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[4] Courts "may void the entire contract" where talent agency services regulated by the TAA are "inseparable from [unregulated] managerial services." *Marathon Entertainment, Inc.* v. *Blasi*, 42 Cal. 4th 974, 998, 174 P. 3d 741, 744 (2008). If the contractual terms are severable, however, "an isolated instance" of unlicensed conduct "does not automatically bar recovery for services that could lawfully be provided without a license." *Ibid.*

[5] To appeal the Labor Commissioner's decision, an aggrieved party must post a bond of at least $1,000 and up to twice the amount of any judgment approved by the Commissioner. § 1700.44(a).

missioner "the right to attend all arbitration hearings." § 1700.45. This prescription demonstrates that there is no inherent conflict between the TAA and arbitration as a dispute resolution mechanism. But § 1700.45 was of no utility to Preston. He has consistently maintained that he is *not* a talent agent as that term is defined in § 1700.4(a), but is, instead, a personal manager not subject to the TAA's regulatory regime. 145 Cal. App. 4th, at 444, 51 Cal. Rptr. 3d, at 631. To invoke § 1700.45, Preston would have been required to concede a point fatal to his claim for compensation—*i. e.*, that he is a talent agent, albeit an unlicensed one—and to have drafted his contract in compliance with a statute that he maintains is inapplicable.

Procedural prescriptions of the TAA thus conflict with the FAA's dispute resolution regime in two basic respects: First, the TAA, in § 1700.44(a), grants the Labor Commissioner exclusive jurisdiction to decide an issue that the parties agreed to arbitrate, see *Buckeye*, 546 U. S., at 446; second, the TAA, in § 1700.45, imposes prerequisites to enforcement of an arbitration agreement that are not applicable to contracts generally, see *Doctor's Associates, Inc.*, 517 U. S., at 687.

B

Ferrer contends that the TAA is nevertheless compatible with the FAA because § 1700.44(a) merely postpones arbitration until after the Labor Commissioner has exercised her primary jurisdiction. Brief for Respondent 14, 40. The party that loses before the Labor Commissioner may file for *de novo* review in Superior Court. See § 1700.44(a). At that point, Ferrer asserts, either party could move to compel arbitration under Cal. Civ. Proc. Code Ann. § 1281.2 (West 2007), and thereby obtain an arbitrator's determination prior to judicial review. See Brief for Respondent 13.

That is not the position Ferrer took in the California courts. In his complaint, he urged the Superior Court to

declare that "the [c]ontract, including in particular the issue of the validity of the [c]ontract, *is not subject to arbitration*," and he sought an injunction stopping arbitration "unless and until, *if ever*, the Labor Commissioner determines that he/she has no jurisdiction over the parties' dispute." App. 29 (emphasis added). Ferrer also told the Superior Court: "[I]f . . . the Commissioner rules that the [c]ontract is void, Preston may appeal that ruling and have a hearing de novo *before this Court*." Appellant's App. in No. B188997 (Cal. App.), p. 157, n. 1 (emphasis added).

Nor does Ferrer's current argument—that § 1700.44(a) merely postpones arbitration—withstand examination. Section 1700.44(a) provides for *de novo* review in Superior Court, not elsewhere.[6] Arbitration, if it ever occurred following the Labor Commissioner's decision, would likely be long delayed, in contravention of Congress' intent "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 22 (1983). If Ferrer prevailed in the California courts, moreover, he would no doubt argue that judicial findings of fact and conclusions of law, made after a full and fair *de novo* hearing in court, are binding on the parties and preclude the arbitrator from making any contrary rulings.

A prime objective of an agreement to arbitrate is to achieve "streamlined proceedings and expeditious results." *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*,

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[6] From Superior Court an appeal lies in the Court of Appeal. Cal. Civ. Proc. Code Ann. § 904.1(a) (West 2007); Cal. Rule of Court 8.100(a) (Appellate Rules) (West 2007 rev. ed.). Thereafter, the losing party may seek review in the California Supreme Court, Rule 8.500(a)(1) (Appellate Rules), perhaps followed by a petition for a writ of certiorari in this Court, 28 U. S. C. § 1257. Ferrer has not identified a single case holding that California law permits interruption of this chain of appeals to allow the arbitrator to review the Labor Commissioner's decision. See Tr. of Oral Arg. 35.

473 U. S. 614, 633 (1985). See also *Allied-Bruce Terminix Cos.*, 513 U. S., at 278; *Southland Corp.*, 465 U. S., at 7. That objective would be frustrated even if Preston could compel arbitration in lieu of *de novo* Superior Court review. Requiring initial reference of the parties' dispute to the Labor Commissioner would, at the least, hinder speedy resolution of the controversy.

Ferrer asks us to overlook the apparent conflict between the arbitration clause and § 1700.44(a) because proceedings before the Labor Commissioner are administrative rather than judicial. Brief for Respondent 40–48. Allowing parties to proceed directly to arbitration, Ferrer contends, would undermine the Labor Commissioner's ability to stay informed of potentially illegal activity, *id.*, at 43, and would deprive artists protected by the TAA of the Labor Commissioner's expertise, *id.*, at 41–43.

In *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20 (1991), we considered and rejected a similar argument, namely, that arbitration of age discrimination claims would undermine the role of the Equal Employment Opportunity Commission (EEOC) in enforcing federal law. The "mere involvement of an administrative agency in the enforcement of a statute," we held, does not limit private parties' obligation to comply with their arbitration agreements. *Id.*, at 28–29.

Ferrer points to our holding in *EEOC* v. *Waffle House, Inc.*, 534 U. S. 279, 293–294 (2002), that an arbitration agreement signed by an employee who becomes a discrimination complainant does not bar the EEOC from filing an enforcement suit in its own name. He further emphasizes our observation in *Gilmer* that individuals who agreed to arbitrate their discrimination claims would "still be free to file a charge with the EEOC." 500 U. S., at 28. Consistent with these decisions, Ferrer argues, the arbitration clause in his contract with Preston leaves undisturbed the Labor Com-

missioner's independent authority to enforce the TAA. See Brief for Respondent 44–48. And so it may.[7] But in proceedings under § 1700.44(a), the Labor Commissioner functions not as an advocate advancing a cause before a tribunal authorized to find the facts and apply the law; instead, the Commissioner serves as impartial arbiter. That role is just what the FAA-governed agreement between Ferrer and Preston reserves for the arbitrator. In contrast, in *Waffle House* and in the *Gilmer* aside Ferrer quotes, the Court addressed the role of an agency, not as adjudicator but as prosecutor, pursuing an enforcement action in its own name or reviewing a discrimination charge to determine whether to initiate judicial proceedings.

Finally, it bears repeating that Preston's petition presents precisely and only a question concerning the forum in which the parties' dispute will be heard. See *supra*, at 352. "By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral . . . forum." *Mitsubishi Motors Corp.*, 473 U. S., at 628. So here, Ferrer relinquishes no substantive rights the TAA or other California law may accord him. But under the contract he signed, he cannot escape resolution of those rights in an arbitral forum.

In sum, we disapprove the distinction between judicial and administrative proceedings drawn by Ferrer and adopted by the appeals court. When parties agree to arbitrate all questions arising under a contract, the FAA supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative.

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[7] Enforcement of the parties' arbitration agreement in this case does not displace any independent authority the Labor Commissioner may have to investigate and rectify violations of the TAA. See Brief for Respondent 47 ("[T]he Commissioner has independent investigatory authority and may receive information concerning alleged violations of the TAA from any source." (citation omitted)). See also Tr. of Oral Arg. 13–14.

V

Ferrer's final attempt to distinguish *Buckeye* relies on *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468 (1989). *Volt* involved a California statute dealing with cases in which "[a] party to [an] arbitration agreement is also a party to a pending court action . . . [involving] a third party [not bound by the arbitration agreement], arising out of the same transaction or series of related transactions." Cal. Civ. Proc. Code Ann. § 1281.2(c) (West 2007). To avoid the "possibility of conflicting rulings on a common issue of law or fact," the statute gives the Superior Court authority, *inter alia*, to stay the court proceeding "pending the outcome of the arbitration" or to stay the arbitration "pending the outcome of the court action." *Ibid.*

Volt Information Sciences and Stanford University were parties to a construction contract containing an arbitration clause. When a dispute arose and Volt demanded arbitration, Stanford sued Volt and two other companies involved in the construction project. Those other companies were not parties to the arbitration agreement; Stanford sought indemnification from them in the event that Volt prevailed against Stanford. At Stanford's request, the Superior Court stayed the arbitration. The California Court of Appeal affirmed the stay order. Volt and Stanford incorporated § 1281.2(c) into their agreement, the appeals court held. They did so by stipulating that the contract—otherwise silent on the priority of suits drawing in parties not subject to arbitration—would be governed by California law. *Board of Trustees of Leland Stanford Junior Univ.* v. *Volt Information Sciences, Inc.*, 240 Cal. Rptr. 558, 561 (1987) (officially depublished). Relying on the Court of Appeal's interpretation of the contract, we held that the FAA did not bar a stay of arbitration pending the resolution of Stanford's Superior Court suit against Volt and the two companies not bound by the arbitration agreement.

Preston and Ferrer's contract also contains a choice-of-law clause, which states that the "agreement shall be governed by the laws of the state of California." App. 17. A separate saving clause provides: "If there is any conflict between this agreement and any present or future law," the law prevails over the contract "to the extent necessary to bring [the contract] within the requirements of said law." *Id.*, at 18. Those contractual terms, according to Ferrer, call for the application of California procedural law, including § 1700.44(a)'s grant of exclusive jurisdiction to the Labor Commissioner.

Ferrer's reliance on *Volt* is misplaced for two discrete reasons. First, arbitration was stayed in *Volt* to accommodate litigation involving third parties who were strangers to the arbitration agreement. Nothing in the arbitration agreement addressed the order of proceedings when pending litigation with third parties presented the prospect of inconsistent rulings. We thought it proper, in those circumstances, to recognize state law as the gap filler.

Here, in contrast, the arbitration clause speaks to the matter in controversy; it states that "any dispute . . . relating to . . . the breach, validity, or legality" of the contract should be arbitrated in accordance with the American Arbitration Association (AAA) rules. App. 18. Both parties are bound by the arbitration agreement; the question of Preston's status as a talent agent relates to the validity or legality of the contract; there is no risk that related litigation will yield conflicting rulings on common issues; and there is no other procedural void for the choice-of-law clause to fill.

Second, we are guided by our more recent decision in *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*, 514 U. S. 52 (1995). Although the contract in *Volt* provided for "arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association," 489 U. S., at 470, n. 1 (internal quotation marks omitted), Volt never argued that incorporation of those rules trumped the choice-of-law clause contained in the contract, see Brief for

Appellant, and Reply Brief, in *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, O. T. 1988, No. 87–1318. Therefore, neither our decision in *Volt* nor the decision of the California appeals court in that case addressed the import of the contract's incorporation by reference of privately promulgated arbitration rules.

In *Mastrobuono*, we reached that open question while interpreting a contract with both a New York choice-of-law clause and a clause providing for arbitration in accordance with the rules of the National Association of Securities Dealers (NASD). 514 U. S., at 58–59.[8] The "best way to harmonize" the two clauses, we held, was to read the choice-of-law clause "to encompass substantive principles that New York courts would apply, but not to include [New York's] special rules limiting the authority of arbitrators." *Id.*, at 63–64.

Preston and Ferrer's contract, as noted, provides for arbitration in accordance with the AAA rules. App. 18. One of those rules states that "[t]he arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part." AAA, Commercial Arbitration Rules ¶ R–7(b) (2007), online at http://www.adr.org/sp.asp?id=22440 (as visited Feb. 15, 2008, and in Clerk of Court's case file). The incorporation of the AAA rules, and in particular Rule 7(b), weighs against inferring from the choice-of-law clause an understanding shared by Ferrer and Preston that their disputes would be heard, in

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[8]The question in *Mastrobuono* was whether the arbitrator could award punitive damages. See *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*, 514 U. S. 52, 53–54 (1995). New York law prohibited arbitrators, but not courts, from awarding such damages. *Id.*, at 55. The NASD rules, in contrast, authorized "damages and other relief," which, according to an NASD arbitration manual, included punitive damages. *Id.*, at 61 (internal quotation marks omitted). Relying on *Volt*, respondents argued that the choice-of-law clause incorporated into the parties' arbitration agreement New York's ban on arbitral awards of punitive damages. Opposing that argument, petitioners successfully urged that the agreement to arbitrate in accordance with the NASD rules controlled.

the first instance, by the Labor Commissioner. Following the guide *Mastrobuono* provides, the "best way to harmonize" the parties' adoption of the AAA rules and their selection of California law is to read the latter to encompass prescriptions governing the substantive rights and obligations of the parties, but not the State's "special rules limiting the authority of arbitrators." 514 U. S., at 63–64.

* * *

For the reasons stated, the judgment of the California Court of Appeal is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE THOMAS, dissenting.

As I have stated on many previous occasions, I believe that the Federal Arbitration Act (FAA), 9 U. S. C. §1 *et seq.* (2000 ed. and Supp. V), does not apply to proceedings in state courts. See *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265, 285–297 (1995) (dissenting opinion); see also *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440, 449 (2006) (same); *Green Tree Financial Corp.* v. *Bazzle*, 539 U. S. 444, 460 (2003) (same); *Doctor's Associates, Inc.* v. *Casarotto*, 517 U. S. 681, 689 (1996) (same). Thus, in state-court proceedings, the FAA cannot displace a state law that delays arbitration until administrative proceedings are completed. Accordingly, I would affirm the judgment of the Court of Appeal.

Syllabus

ROWE, ATTORNEY GENERAL OF MAINE *v.* NEW HAMPSHIRE MOTOR TRANSPORT ASSOCIATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 06–457. Argued November 28, 2007—Decided February 20, 2008

Although a provision of the Federal Aviation Administration Authorization Act of 1994 forbids States to "enact or enforce a law . . . related to a price, route, or service of any motor carrier," 49 U. S. C. §14501(c)(1), see also §41713(b)(4)(A), Maine adopted a law which, *inter alia*, (1) specifies that a state-licensed tobacco shipper must utilize a delivery company that provides a recipient-verification service that confirms the buyer is of legal age, and (2) adds, in prohibiting unlicensed tobacco shipments into the State, that a person is deemed to know that a package contains tobacco if it is marked as originating from a Maine-licensed tobacco retailer or if it is received from someone whose name appears on an official list of *un*-licensed tobacco retailers distributed to package-delivery companies. In respondent carrier associations' suit, the District Court and the First Circuit agreed with respondents that Maine's recipient-verification and deemed-to-know provisions were pre-empted by federal law.

Held: Federal law pre-empts the two state-law provisions at issue. Pp. 370–377.

(a) In interpreting the 1994 federal Act, the Court follows *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 378, in which it interpreted similar language in the pre-emption provision of the Airline Deregulation Act of 1978. Voiding state enforcement of consumer-fraud statutes against deceptive airline-fare advertisements, *Morales* determined, *inter alia*, that the federal Act pre-empted state actions having a "connection with" carrier "'rates, routes, or services,'" *id.*, at 384; that pre-emption may occur even if a state law has only an indirect effect on rates, routes, or services, *id.*, at 386; and that pre-emption occurs at least where state laws have a "significant impact" related to Congress' deregulatory and pre-emption-related objectives, *id.*, at 390. The Court also emphasized that the airline Act's overarching goal of helping ensure that transportation rates, routes, and services reflects maximum reliance on competitive market forces, *id.*, at 378, and stated that federal law might not pre-empt state laws affecting fares only tenuously, remotely, or peripherally, but did not say where, or how, it would draw the line on "borderline" questions, *id.*, at 390. Pp. 370–371.

Syllabus

(b) In light of *Morales*, the Maine laws at issue are pre-empted. In regulating delivery service procedures, the recipient-verification provision focuses on trucking and similar services, thereby creating a direct "connection with" motor-carrier services. See 504 U. S., at 384. It also has a "significant" and adverse "impact" in respect to the federal Act's ability to achieve its pre-emption-related objectives, *id.*, at 390, because it requires carriers to offer a system of services that the market does not now provide (and which the carriers would prefer not to offer). Even were that not so, the law would freeze into place services that carriers might prefer to discontinue in the future, thereby producing the very effect the federal law sought to avoid, *i. e.*, a State's direct substitution of its own governmental commands for "competitive market forces" in determining (to a significant degree) the services that motor carriers will provide. *Id.*, at 378. Maine's deemed-to-know provision applies yet more directly to motor-carrier services by creating a conclusive presumption of carrier knowledge that a shipment contains tobacco in the specified circumstances. That presumption means that the law imposes civil liability upon the carrier, not simply for its knowing transport of (unlicensed) tobacco, but for the carrier's *failure sufficiently to examine every package*. The provision thus requires the carrier to check each shipment for certain markings and to compare it against the list of proscribed shippers, thereby directly regulating a significant aspect of the motor carrier's package pickup and delivery service and creating the kind of state-mandated regulation that the federal Act pre-empts. Pp. 371–373.

(c) Maine's primary arguments for an exception from pre-emption—that its laws help prevent minors from obtaining cigarettes and thereby protect its citizens' public health—are unavailing. The federal law does not create a public health exception, but, to the contrary, explicitly lists a set of exceptions that do not include public health. See, *e. g.*, §§ 14501(c)(2) to (c)(3). Nor does its legislative history mention specific state enforcement methods or suggest that Congress made a firm judgment about, or even focused upon, the issue here. Maine's inability to find significant support for such an exception is not surprising, given the number of States through which carriers travel, the number of products carried, the variety of potential adverse public health effects, the many different kinds of regulatory rules potentially available, and the difficulty of finding a legal criterion for separating permissible from impermissible public-health-oriented regulations. Although federal law does not generally pre-empt state public health regulation, the state laws at issue are not general, their impact on carrier rates, routes, or services is significant, and their connection with trucking is not tenuous, remote, or peripheral: They aim directly at the carriage of goods, a commercial field where carriage by commercial motor vehicles plays a major role.

Syllabus

From the perspective of pre-emption, this case is no more "borderline" than was *Morales*. Maine argues that to set aside its regulations will seriously harm its efforts to prevent minors from obtaining cigarettes, but the Solicitor General points to other legislative alternatives available to the State. Regardless, given *Morales*' holding that federal law pre-empts state consumer-protection laws, federal law must also pre-empt Maine's efforts directly to regulate carrier services. Pp. 373–377.

448 F. 3d 66, affirmed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, SOUTER, THOMAS, GINSBURG, and ALITO, JJ., joined, and in which SCALIA, J., joined in part. GINSBURG, J., filed a concurring opinion, *post*, p. 377. SCALIA, J., filed an opinion concurring in part, *post*, p. 378.

G. Steven Rowe, Attorney General of Maine, petitioner, argued the cause *pro se*. With him on the briefs were *Paul Stern*, Deputy Attorney General, and *Melissa Reynolds O'Dea*, *Christopher C. Taub*, and *Peter B. LaFond*, Assistant Attorneys General.

Beth S. Brinkmann argued the cause for respondents. With her on the brief were *Paul T. Friedman*, *Ruth N. Borenstein*, and *Lawrence R. Katzin*.

Douglas Hallward-Driemeier argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Kneedler*, *Mark B. Stern*, *Christine N. Kohl*, *Paul M. Geier*, and *Dale C. Andrews*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of California et al. by *Edmund G. Brown, Jr.*, Attorney General of California, *Thomas J. Greene*, Chief Assistant Attorney General, *Manuel Medeiros*, Solicitor General, *Dennis Eckhart*, Senior Assistant Attorney General, and *Laura Kaplan*, Deputy Attorney General, by *Roberto J. Sánchez-Ramos*, Secretary of Justice of Puerto Rico, and by the Attorneys General and other officials for their respective jurisdictions as follows: *Troy King* of Alabama, *Talis J. Colberg* of Alaska, *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *Richard Blumenthal* of Connecticut, *Carl C. Danberg* of Delaware, *Linda Singer* of the District of Columbia, *Bill McCollum* of Florida, *Mark J. Bennett* of Hawaii, *Lawrence Wasden* of Idaho,

JUSTICE BREYER delivered the opinion of the Court.

We here consider whether a federal statute that prohibits States from enacting any law "related to" a motor carrier "price, route, or service" pre-empts two provisions of a Maine tobacco law, which regulate the delivery of tobacco to customers within the State. 49 U. S. C. §§ 14501(c)(1), 41713(b)(4)(A); see Me. Rev. Stat. Ann., Tit. 22, §§ 1555–C(3)(C), 1555–D (second sentence) (2004). We hold that the federal law pre-empts both provisions.

I

A

In 1978, Congress "determin[ed] that 'maximum reliance on competitive market forces'" would favor lower airline fares and better airline service, and it enacted the Airline

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Lisa Madigan of Illinois, *Steve Carter* of Indiana, *Thomas J. Miller* of Iowa, *Michael Plumley*, Assistant Attorney General of Kentucky, *Martha Coakley* of Massachusetts, *Douglas F. Gansler* of Maryland, *Michael A. Cox* of Michigan, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Catherine Cortez Masto* of Nevada, *Gary K. King* of New Mexico, *Andrew M. Cuomo* of New York, *Wayne Stenehjem* of North Dakota, *Marc Dann* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Henry McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Darrell V. McGraw, Jr.*, of West Virginia, *J. B. Van Hollen* of Wisconsin, and *Kristie Langley*, Assistant Attorney General of Wyoming; for the National Conference of State Legislatures et al. by *Richard Ruda*, *Scott L. Nelson*, and *Steven H. Goldblatt*; and for the Tobacco Control Legal Consortium et al. by *Kathleen Hoke Dachille*.

Briefs of *amici curiae* urging affirmance were filed for the American Trucking Associations, Inc., et al. by *Evan M. Tager*, *Robert Digges, Jr.*, *Robin S. Conrad*, and *Amar D. Sarwal*; and for Federal Express Corp. et al. by *Robert K. Spotswood*, *Connie Lewis Lensing*, and *R. Jeffery Kelsey*.

Carter G. Phillips, *Jacqueline G. Cooper*, and *Joanne Moak* filed a brief for Wine and Spirits Wholesalers of America, Inc., as *amicus curiae*.

Deregulation Act. *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 378 (1992) (quoting 49 U. S. C. App. § 1302(a)(4) (1988 ed.)); see 92 Stat. 1705. In order to "ensure that the States would not undo federal deregulation with regulation of their own," that Act "included a pre-emption provision" that said "no State . . . shall enact or enforce any law . . . relating to rates, routes, or services of any air carrier." *Morales*, *supra*, at 378; 49 U. S. C. App. § 1305(a)(1) (1988 ed.).

In 1980, Congress deregulated trucking. See Motor Carrier Act of 1980, 94 Stat. 793. And a little over a decade later, in 1994, Congress similarly sought to pre-empt state trucking regulation. See Federal Aviation Administration Authorization Act of 1994, 108 Stat. 1605–1606; see also ICC Termination Act of 1995, 109 Stat. 899. In doing so, it borrowed language from the Airline Deregulation Act of 1978 and wrote into its 1994 law language that says: "[A] State . . . may not enact or enforce a law . . . related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." 49 U. S. C. § 14501(c)(1); see also § 41713(b)(4)(A) (similar provision for combined motor-air carriers).

The State of Maine subsequently adopted An Act To Regulate the Delivery and Sales of Tobacco Products and To Prevent the Sale of Tobacco Products to Minors, 2003 Me. Acts p. 1089, two sections of which are relevant here. The first section forbids anyone other than a Maine-licensed tobacco retailer to accept an order for delivery of tobacco. Me. Rev. Stat. Ann., Tit. 22, § 1555–C(1). It then adds that, when a licensed retailer accepts an order and ships tobacco, the retailer must "utilize a delivery service" that provides a special kind of *recipient-verification* service. § 1555–C(3)(C). The delivery service must make certain that (1) the person who bought the tobacco is the person to whom the package is addressed; (2) the person to whom the package is addressed is of legal age to purchase tobacco; (3) the person to whom

the package is addressed has himself or herself signed for the package; and (4) the person to whom the package is addressed, if under the age of 27, has produced a valid government-issued photo identification with proof of age. *Ibid.* Violations are punishable by civil penalties. See §§ 1555–C(3)(E) to C(3)(F) (first offense up to $1,500; subsequent offenses up to $5,000).

The second section forbids any person "knowingly" to "transport" a "tobacco product" to "a person" in Maine unless either the sender or the receiver has a Maine license. § 1555–D. It then adds that a "person is *deemed to know* that a package contains a tobacco product" (1) if the package is marked as containing tobacco and displays the name and license number of a Maine-licensed tobacco retailer; or (2) if the person receives the package from someone whose name appears on a list of *un*-licensed tobacco retailers that Maine's attorney general distributes to various package-delivery companies. *Ibid.* (emphasis added); see also §§ 1555–C(3)(B), 1555–D(1). Violations are again punishable by civil penalties. § 1555–D(2) (up to $1,500 per violation against violator and/or violator's employer).

B

Respondents, several transport carrier associations, brought this lawsuit in federal court, claiming that federal law pre-empts several sections of Maine's statute. The District Court held (among other things) that federal law pre-empts the portions of the two sections we have described, namely, the "recipient-verification" provision (§ 1555–C(3)(C)) and the "deemed to know" provision (the second sentence of § 1555–D). See 377 F. Supp. 2d 197, 220 (Me. 2005). On appeal, the Court of Appeals for the First Circuit agreed that federal law pre-empted the two provisions. 448 F. 3d 66, 82 (2006). We granted certiorari to review these determinations. 551 U. S. 1144 (2007).

II

A

In *Morales*, this Court interpreted the pre-emption provision in the Airline Deregulation Act of 1978. See 504 U. S., at 378. And we follow *Morales* in interpreting similar language in the 1994 Act before us here. We have said that "when judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its judicial interpretations as well." *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U. S. 71, 85 (2006) (internal quotation marks and alteration omitted). Here, the Congress that wrote the language before us copied the language of the air-carrier pre-emption provision of the Airline Deregulation Act of 1978. Compare 49 U. S. C. §§ 14501(c)(1), 41713(b)(4)(A), with 49 U. S. C. App. § 1305(a)(1) (1988 ed.); see also H. R. Conf. Rep. No. 103–677, pp. 82–83, 85 (1994) (hereinafter H. R. Conf. Rep.). And it did so fully aware of this Court's interpretation of that language as set forth in *Morales*. See H. R. Conf. Rep., at 83 (motor carriers will enjoy "the identical intrastate preemption of prices, routes and services as that originally contained in" the Airline Deregulation Act); *ibid.* (expressing agreement with "the broad preemption interpretation adopted by the United States Supreme Court in *Morales*"); *id.*, at 85.

In *Morales*, the Court determined: (1) that "|s|tate enforcement actions *having a connection with, or reference to*," carrier "'rates, routes, or services' are pre-empted," 504 U. S., at 384 (emphasis added); (2) that such pre-emption may occur even if a state law's effect on rates, routes, or services "is only indirect," *id.*, at 386 (internal quotation marks omitted); (3) that, in respect to pre-emption, it makes no difference whether a state law is "consistent" or "inconsistent" with federal regulation, *id.*, at 386–387 (emphasis deleted);

and (4) that pre-emption occurs at least where state laws have a "significant impact" related to Congress' deregulatory and pre-emption-related objectives, *id.*, at 390. The Court described Congress' overarching goal as helping ensure transportation rates, routes, and services that reflect "maximum reliance on competitive market forces," thereby stimulating "efficiency, innovation, and low prices," as well as "variety" and "quality." *Id.*, at 378 (internal quotation marks omitted). *Morales* held that, given these principles, federal law pre-empts States from enforcing their consumer-fraud statutes against deceptive airline-fare advertisements. *Id.*, at 391. See *American Airlines, Inc.* v. *Wolens*, 513 U. S. 219, 226–228 (1995) (federal law pre-empts application of a State's general consumer-protection statute to an airline's frequent flyer program).

Finally, *Morales* said that federal law might not pre-empt state laws that affect fares in only a "tenuous, remote, or peripheral . . . manner," such as state laws forbidding gambling. 504 U. S., at 390 (internal quotation marks omitted). But the Court did not say where, or how, "it would be appropriate to draw the line," for the state law before it did not "present a borderline question." *Ibid.* (internal quotation marks omitted); see also *Wolens*, *supra*, at 226.

B

In light of *Morales*, we find that federal law pre-empts the Maine laws at issue here. Section 1555–C(3)(C) of the Maine statute forbids licensed tobacco retailers to employ a "delivery service" unless that service follows particular delivery procedures. Me. Rev. Stat. Ann., Tit. 22, § 1555–C(3)(C). In doing so, it focuses on trucking and other motor-carrier services (which make up a substantial portion of all "delivery services," § 1551(1–C)), thereby creating a direct "connection with" motor-carrier services. See *Morales*, 504 U. S., at 384.

At the same time, the provision has a "significant" and adverse "impact" in respect to the federal Act's ability to

achieve its pre-emption-related objectives. *Id.*, at 390. The Solicitor General and the carrier associations claim (and Maine does not deny) that the law will require carriers to offer a system of services that the market does not now provide (and which the carriers would prefer not to offer). And even were that not so, the law would freeze into place services that carriers might prefer to discontinue in the future. The Maine law thereby produces the very effect that the federal law sought to avoid, namely, a State's direct substitution of its own governmental commands for "competitive market forces" in determining (to a significant degree) the services that motor carriers will provide. *Id.*, at 378 (internal quotation marks omitted).

We concede that the regulation here is less "direct" than it might be, for it tells *shippers* what to choose rather than *carriers* what to do. Nonetheless, the effect of the regulation is that carriers will have to offer tobacco delivery services that differ significantly from those that, in the absence of the regulation, the market might dictate. And that being so, "treating sales restrictions and purchase restrictions differently for pre-emption purposes would make no sense." *Engine Mfrs. Assn.* v. *South Coast Air Quality Management Dist.*, 541 U. S. 246, 255 (2004). If federal law pre-empts state efforts to regulate, and consequently to affect, the advertising *about* carrier rates and services at issue in *Morales*, it must pre-empt Maine's efforts to regulate carrier delivery services themselves.

Section 1555–D's "deemed to know" provision applies yet more directly to motor-carrier services. The provision creates a conclusive presumption of carrier knowledge that a shipment contains tobacco when it is marked as originating from a Maine-licensed tobacco retailer or is sent by anyone Maine has specifically identified as an unlicensed tobacco retailer. That presumption means that the Maine law imposes civil liability upon the carrier, not simply for its knowing

transport of (unlicensed) tobacco, but for the carrier's *failure sufficiently to examine every package*. The provision thus requires the carrier to check each shipment for certain markings and to compare it against the Maine attorney general's list of proscribed shippers. And it thereby directly regulates a significant aspect of the motor carrier's package pickup and delivery service. In this way it creates the kind of state-mandated regulation that the federal Act pre-empts.

Maine replies that the regulation will impose no significant additional costs upon carriers. But even were that so (and the carriers deny it), Maine's reply is off the mark. As with the recipient-verification provision, the "deemed to know" provision would freeze in place and immunize from competition a service-related system that carriers do not (or in the future might not) wish to provide. *Supra*, at 371–372. To allow Maine to insist that the carriers provide a special checking system would allow other States to do the same. And to interpret the federal law to permit these, and similar, state requirements could easily lead to a patchwork of state service-determining laws, rules, and regulations. That state regulatory patchwork is inconsistent with Congress' major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace. See H. R. Conf. Rep., at 87. If federal law pre-empts state regulation of the details of an air carrier's frequent flyer program, a program that primarily *promotes* carriage, see *Wolens*, *supra*, at 226–228, it must pre-empt state regulation of the essential details of a motor carrier's system for picking up, sorting, and carrying goods—essential details of the carriage itself.

C

Maine's primary arguments focus upon the *reason why* it has enacted the provisions in question. Maine argues for an exception from pre-emption on the ground that its laws help it prevent minors from obtaining cigarettes. In Maine's

view, federal law does not pre-empt a State's efforts to protect its citizens' public health, particularly when those laws regulate so dangerous an activity as underage smoking.

Despite the importance of the public health objective, we cannot agree with Maine that the federal law creates an exception on that basis, exempting state laws that it would otherwise pre-empt. The Act says nothing about a public health exception. To the contrary, it explicitly lists a set of exceptions (governing motor vehicle safety, certain local route controls, and the like), but the list says nothing about public health. See 49 U. S. C. §§ 14501(c)(2) to (c)(3); see also § 41713(b)(4)(B). Maine suggests that the provision's history indicates that Congress' primary concern was not with the sort of law it has enacted, but instead with state "economic" regulation. See, *e. g.*, H. R. Conf. Rep., at 88; see also *Columbus* v. *Ours Garage & Wrecker Service, Inc.*, 536 U. S. 424, 440 (2002). But it is frequently difficult to distinguish between a State's "economic"-related and "health"-related motivations, see *infra*, at 375, and, indeed, the parties vigorously dispute Maine's actual motivation for the laws at issue here. Consequently, it is not surprising that Congress declined to insert the term "economic" into the operative language now before us, despite having at one time considered doing so. See S. Rep. No. 95–631, p. 171 (1978) (reprinting Senate bill).

Maine's argument for an implied "public health" or "tobacco" exception to federal pre-emption rests largely upon (1) legislative history containing a list of nine States, with laws resembling Maine's, that Congress thought did not regulate "intrastate prices, routes and services of motor carriers," see H. R. Conf. Rep., at 86; and (2) the Synar Amendment, a law that denies States federal funds unless they forbid sales of tobacco to minors, see 42 U. S. C. §§ 300x–26(a)(1), (b)(1). The legislative history, however, does not suggest Congress made a firm judgment about, or even focused upon, the issue now before us. And the Synar

Amendment nowhere mentions the particular state enforcement method here at issue; indeed, it does not mention specific state enforcement methods at all.

Maine's inability to find significant support for some kind of "public health" exception is not surprising. "Public health" does not define itself. Many products create "public health" risks of differing kind and degree. To accept Maine's justification in respect to a rule regulating services would legitimate rules regulating routes or rates for similar public health reasons. And to allow Maine directly to regulate carrier services would permit other States to do the same. Given the number of States through which carriers travel, the number of products, the variety of potential adverse public health effects, the many different kinds of regulatory rules potentially available, and the difficulty of finding a legal criterion for separating permissible from impermissible public-health-oriented regulations, Congress is unlikely to have intended an implicit general "public health" exception broad enough to cover even the shipments at issue here.

This is not to say that this federal law generally pre-empts state public health regulation: for instance, state regulation that broadly prohibits certain forms of conduct and affects, say, truckdrivers, only in their capacity as members of the public (*e. g.*, a prohibition on smoking in certain public places). We have said that federal law does not pre-empt state laws that affect rates, routes, or services in "too tenuous, remote, or peripheral a manner." *Morales*, 504 U. S., at 390 (internal quotation marks omitted). And we have written that the state laws whose "effect" is "forbidden" under federal law are those with a "*significant* impact" on carrier rates, routes, or services. *Id.*, at 388, 390 (emphasis added).

In this case, the state law is not general, it does not affect truckers solely in their capacity as members of the general public, the impact is significant, and the connection with trucking is not tenuous, remote, or peripheral. The state

statutes aim directly at the carriage of goods, a commercial field where carriage by commercial motor vehicles plays a major role. The state statutes require motor-carrier operators to perform certain services, thereby limiting their ability to provide incompatible alternative services; and they do so simply because the State seeks to enlist the motor-carrier operators as allies in its enforcement efforts. Given these circumstances, from the perspective of pre-emption, this case is no more "borderline" than was *Morales*. *Id.*, at 390 (internal quotation marks omitted); see also *Wolens*, 513 U. S., at 226.

Maine adds that it possesses legal authority to prevent *any* tobacco shipments from entering into or moving within the State, and that the broader authority must encompass the narrower authority to regulate the *manner* of tobacco shipments. But even assuming purely for argument's sake that Maine possesses the broader authority, its conclusion does not follow. To accept that conclusion would permit Maine to regulate carrier routes, carrier rates, and carrier services, all on the ground that such regulation would not restrict carriage of the goods as seriously as would a total ban on shipments. And it consequently would severely undermine the effectiveness of Congress' pre-emptive provision. Indeed, it would create the very exception that we have just rejected, extending that exception to all other products a State might ban. We have explained why we do not believe Congress intended that result. *Supra*, at 373–375 and this page.

Finally, Maine says that to set aside its regulations will seriously harm its efforts to prevent cigarettes from falling into the hands of minors. The Solicitor General denies that this is so. He suggests that Maine, like other States, can prohibit all persons from providing tobacco products to minors (as it already has, see Me. Rev. Stat. Ann., Tit. 22, § 1555–B(2) (Supp. 2007)); that it can ban all non-face-to-face sales of tobacco; that it might pass other laws of general

(non-carrier-specific) applicability; and that it can, if necessary, seek appropriate federal regulation (see, *e. g.*, H. R. 4081, 110th Cong., 1st Sess. (2007) (proposed bill regulating tobacco shipment); H. R. 4128, 110th Cong., 1st Sess., §§ 1411–1416, pp. 577–583 (2007) (proposed bill providing criminal penalties for trafficking in contraband tobacco)). Regardless, given *Morales*, where the Court held that federal law pre-empts state consumer-protection laws, we find that federal law must also pre-empt Maine's efforts directly to regulate carrier services.

For these reasons, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE GINSBURG, concurring.

Today's decision declares key portions of Maine's Tobacco Delivery Law incompatible with the Federal Aviation Administration Authorization Act of 1994 (FAAAA). The breadth of the FAAAA's preemption language, 49 U. S. C. §§ 14501(c)(1) and 41713(b)(4)(A), coupled with our decisions closely in point, *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374 (1992), and *American Airlines, Inc.* v. *Wolens*, 513 U. S. 219 (1995), impel that conclusion. I write separately to emphasize the large regulatory gap left by an application of the FAAAA perhaps overlooked by Congress, and the urgent need for the National Legislature to fill that gap.

Tobacco use by children and adolescents, we have recognized, may be "the single most significant threat to public health in the United States." *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 161 (2000). But no comprehensive federal law currently exists to prevent tobacco sellers from exploiting the underage market. Instead, Congress has encouraged state efforts. Congress has done so by providing funding incentives for the States to pass legislation making it unlawful to "sell or distribute any [tobacco] product to any individual under the age of 18." Synar Amend-

ment, 106 Stat. 394, 42 U. S. C. §300x–26(a)(1). See *Lorillard Tobacco Co.* v. *Reilly*, 533 U. S. 525, 552, 571 (2001).

State measures to prevent youth access to tobacco, however, are increasingly thwarted by the ease with which tobacco products can be purchased through the Internet. "As cyberspace acts as a risk-free zone where minors can anonymously purchase tobacco, unrestricted online tobacco sales create a major barrier to comprehensive youth tobacco control." Brief for Tobacco Control Legal Consortium et al. as *Amici Curiae* 10 (footnote omitted). See also Brief for California et al. as *Amici Curiae* 9 ("Illegal Internet tobacco sales have reached epidemic proportions.").

Maine and its *amici* maintain that, to guard against delivery of tobacco products to children, "the same sort of age verification safeguards [must be] used when tobacco is handed over-the-doorstep as . . . when it is handed over-the-counter." Brief for Petitioner 8; Brief for California et al. as *Amici Curiae* 11; Brief for Tobacco Control Legal Consortium et al. as *Amici Curiae* 11–12; cf. Brief for United States as *Amicus Curiae* 16. The FAAAA's broad preemption provisions, the Court holds, bar States from adopting this sensible enforcement strategy. While I join the Court's opinion, I doubt that the drafters of the FAAAA, a statute designed to deregulate the carriage of goods, anticipated the measure's facilitation of minors' access to tobacco. Now alerted to the problem, Congress has the capacity to act with care and dispatch to provide an effective solution.

JUSTICE SCALIA, concurring in part.

I join the opinion of the Court, except those portions (*ante*, at 370, 373, and 374) that rely on the reports of committees of one House of Congress to show the intent of that full House and of the other—with regard to propositions that are apparent from the text of the law, unnecessary to the disposition of the case, or both.

Syllabus

SPRINT/UNITED MANAGEMENT CO. *v.* MENDELSOHN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 06–1221. Argued December 3, 2007—Decided February 26, 2008

In respondent Mendelsohn's age discrimination case, petitioner Sprint moved *in limine* to exclude the testimony of former employees alleging discrimination by supervisors who had no role in the employment decision Mendelsohn challenged, on the ground that such evidence was irrelevant to the case's central issue, see Fed. Rules Evid. 401, 402, and unduly prejudicial, see Rule 403. Granting the motion, the District Court excluded evidence of discrimination against those not "similarly situated" to Mendelsohn. The Tenth Circuit treated that order as applying a *per se* rule that evidence from employees of other supervisors is irrelevant in age discrimination cases, concluded that the District Court abused its discretion by relying on the Circuit's *Aramburu* case, determined that the evidence was relevant and not unduly prejudicial, and remanded for a new trial.

Held: The Tenth Circuit erred in concluding that the District Court applied a *per se* rule and thus improperly engaged in its own analysis of the relevant factors under Rules 401 and 403, rather than remanding the case for the District Court to clarify its ruling. Pp. 383–388.

(a) In deference to a district court's familiarity with a case's details and its greater experience in evidentiary matters, courts of appeals uphold Rule 403 rulings unless the district court has abused its discretion. Here, the Tenth Circuit did not accord due deference to the District Court. The District Court's two-sentence discussion of the evidence neither cited nor gave any other indication that the decision relied on *Aramburu* or suggested that the court applied a *per se* rule of inadmissibility. Neither party's submissions to the District Court suggested that *Aramburu* was controlling. That court's use of the same "similarly situated" phrase that *Aramburu* used cannot be presumed to indicate adoption of *Aramburu*'s analysis, for the District Court was addressing a very different kind of evidence here. And the nature of Sprint's argument was not that the particular evidence was never admissible, but only that such evidence lacked sufficient probative value in this case to be relevant or outweigh prejudice and delay. Pp. 384–386.

(b) Because of the Tenth Circuit's error, it went on to assess the relevance of the evidence itself and conduct its own balancing of probative

value and potential prejudicial effect when it should have allowed the District Court to make these determinations in the first instance, explicitly and on the record. Pp. 386–388.

466 F. 3d 1223, vacated and remanded.

THOMAS, J., delivered the opinion for a unanimous Court.

Paul W. Cane, Jr., argued the cause for petitioner. With him on the briefs were *Katherine C. Huibonhoa*, *Chris R. Pace*, *John J. Yates*, and *Mark G. Arnold*.

Deputy Solicitor General Garre argued the cause for the United States as *amicus curiae*. With him on the brief were *Solicitor General Clement*, *Irving L. Gornstein*, and *Ronald S. Cooper*.

Dennis E. Egan argued the cause for respondent. With him on the brief was *Eric Schnapper*.*

JUSTICE THOMAS delivered the opinion of the Court.

In this age discrimination case, the District Court excluded testimony by nonparties alleging discrimination at the hands of supervisors of the defendant company who played no role in the adverse employment decision challenged by the plaintiff. The Court of Appeals, having concluded that the District Court improperly applied a *per se* rule excluding the evidence, engaged in its own analysis of the relevant factors under Federal Rules of Evidence 401 and

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America by *Evan M. Tager*, *Robin S. Conrad*, and *Shane Brennan*; for the Employers Group by *Lee T. Paterson*, *Amanda C. Sommerfeld*, *Gene C. Schaerr*, and *Linda T. Coberly*; and for the Equal Employment Advisory Council et al. by *Rae T. Vann* and *Karen R. Harned*.

A brief of *amicus curiae* urging affirmance was filed for AARP by *Daniel B. Kohrman*, *Thomas W. Osborne*, *Laurie McCann*, and *Melvin R. Radowitz*.

Michael B. de Leeuw, *Darcy M. Goddard*, and *Michael Foreman* filed a brief for the Lawyers' Committee for Civil Rights Under Law et al. as *amici curiae*.

403, and remanded with instructions to admit the challenged testimony. We granted certiorari on the question whether the Federal Rules of Evidence required admission of the testimony. We conclude that such evidence is neither *per se* admissible nor *per se* inadmissible. Because it is not entirely clear whether the District Court applied a *per se* rule, we vacate the judgment of the Court of Appeals and remand for the District Court to conduct the relevant inquiry under the appropriate standard.

I

Respondent Ellen Mendelsohn was employed in the Business Development Strategy Group of petitioner Sprint/United Management Company (Sprint) from 1989 until 2002, when Sprint terminated her as a part of an ongoing companywide reduction in force. She sued Sprint under the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U. S. C. §621 *et seq.*, alleging disparate treatment based on her age.

In support of her claim, Mendelsohn sought to introduce testimony by five other former Sprint employees who claimed that their supervisors had discriminated against them because of age. Three of the witnesses alleged that they heard one or more Sprint supervisors or managers make remarks denigrating older workers. One claimed that Sprint's intern program was a mechanism for age discrimination and that she had seen a spreadsheet suggesting that a supervisor considered age in making layoff decisions. Another witness was to testify that he had been given an unwarranted negative evaluation and "banned" from working at Sprint because of his age, and that he had witnessed another employee being harassed because of her age. App. 17a. The final witness alleged that Sprint had required him to get permission before hiring anyone over age 40, that after his termination he had been replaced by a younger employee, and that Sprint had rejected his subsequent employment applications.

None of the five witnesses worked in the Business Development Strategy Group with Mendelsohn, nor had any of them worked under the supervisors in her chain of command, which included James Fee, Mendelsohn's direct supervisor; Paul Reddick, Fee's direct manager and the decisionmaker in Mendelsohn's termination; and Bill Blessing, Reddick's supervisor and head of the Business Development Strategy Group. Neither did any of the proffered witnesses report hearing discriminatory remarks by Fee, Reddick, or Blessing.

Sprint moved *in limine* to exclude the testimony, arguing that it was irrelevant to the central issue in the case: whether Reddick terminated Mendelsohn because of her age. See Fed. Rules Evid. 401, 402. Sprint claimed that the testimony would be relevant only if it came from employees who were "similarly situated" to Mendelsohn in that they had the same supervisors. App. 156a. Sprint also argued that, under Rule 403, the probative value of the evidence would be substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading of the jury, and undue delay.

In a minute order, the District Court granted the motion, excluding, in relevant part, evidence of "discrimination against employees not similarly situated to plaintiff." App. to Pet. for Cert. 24a. In clarifying that Mendelsohn could only "offer evidence of discrimination against Sprint employees who are similarly situated to her," the court defined "'[s]imilarly situated employees,' for the purpose of this ruling, [as] requir[ing] proof that (1) Paul Ruddick *[sic]* was the decision-maker in any adverse employment action; and (2) temporal proximity." *Ibid.* Beyond that, the District Court provided no explanation of the basis for its ruling. As the trial proceeded, the judge orally clarified that the minute order was meant to exclude only testimony "that Sprint treated other people unfairly on the basis of age," and would not bar testimony going to the "totally different" question

"whether the [reduction in force], which is [Sprint's] stated nondiscriminatory reason, is a pretext for age discrimination." App. 295a–296a.

The Court of Appeals for the Tenth Circuit treated the minute order as the application of a *per se* rule that evidence from employees with other supervisors is irrelevant to proving discrimination in an ADEA case. Specifically, it concluded that the District Court abused its discretion by relying on *Aramburu* v. *Boeing Co.*, 112 F. 3d 1398 (CA10 1997). 466 F. 3d 1223, 1227–1228 (CA10 2006). *Aramburu* held that "[s]imilarly situated employees," for the purpose of showing disparate treatment in employee discipline, "are those who deal with the same supervisor and are subject to the same standards governing performance evaluation and discipline." 112 F. 3d, at 1404 (internal quotation marks omitted). The Court of Appeals viewed that case as inapposite because it addressed discriminatory discipline, not a companywide policy of discrimination. The Court of Appeals then determined that the evidence was relevant and not unduly prejudicial, and reversed and remanded for a new trial. We granted certiorari, 551 U. S. 1113 (2007), to determine whether, in an employment discrimination action, the Federal Rules of Evidence require admission of testimony by nonparties alleging discrimination at the hands of persons who played no role in the adverse employment decision challenged by the plaintiff.

II

The parties focus their dispute on whether the Court of Appeals correctly held that the evidence was relevant and not unduly prejudicial under Rules 401 and 403. We conclude, however, that the Court of Appeals should not have engaged in that inquiry. Rather, as explained below, we hold that the Court of Appeals erred in concluding that the District Court applied a *per se* rule. Given the circumstances of this case and the unclear basis of the District

Court's decision, the Court of Appeals should have remanded the case to the District Court for clarification.

A

In deference to a district court's familiarity with the details of the case and its greater experience in evidentiary matters, courts of appeals afford broad discretion to a district court's evidentiary rulings. This Court has acknowledged:

> "A district court is accorded a wide discretion in determining the admissibility of evidence under the Federal Rules. Assessing the probative value of [the proffered evidence], and weighing any factors counseling against admissibility is a matter first for the district court's sound judgment under Rules 401 and 403 . . . ." *United States* v. *Abel*, 469 U. S. 45, 54 (1984).

This is particularly true with respect to Rule 403 since it requires an "on-the-spot balancing of probative value and prejudice, potentially to exclude as unduly prejudicial some evidence that already has been found to be factually relevant." 1 S. Childress & M. Davis, Federal Standards of Review § 4.02, p. 4–16 (3d ed. 1999). Under this deferential standard, courts of appeals uphold Rule 403 rulings unless the district court has abused its discretion. See *Old Chief* v. *United States*, 519 U. S. 172, 183, n. 7 (1997).

Here, however, the Court of Appeals did not accord the District Court the deference we have described as the "hallmark of abuse-of-discretion review." *General Elec. Co.* v. *Joiner*, 522 U. S. 136, 143 (1997). Instead, it reasoned that the District Court had "erroneous[ly] conclu[ded] that *Aramburu* controlled the fate of the evidence in this case." 466 F. 3d, at 1230, n. 4.

To be sure, Sprint in its motion *in limine* argued, with a citation to *Aramburu*'s categorical bar, that "[e]mployees may be similarly situated only if they had the same supervi-

sor," App. 163a, and the District Court's minute order mirrors that blanket language.

But the District Court's discussion of the evidence neither cited *Aramburu* nor gave any other indication that its decision relied on that case. The minute order included only two sentences discussing the admissibility of the evidence:

> "Plaintiff may offer evidence of discrimination against Sprint employees who are similarly situated to her. 'Similarly situated employees,' for the purpose of this ruling, requires proof that (1) Paul Ruddick *[sic]* was the decision-maker in any adverse employment action; and (2) temporal proximity." App. to Pet. for Cert. 24a.

Contrary to the Court of Appeals' conclusion, these sentences include no analysis suggesting that the District Court applied a *per se* rule excluding this type of evidence.

Mendelsohn argued on appeal[1] that the District Court must have viewed *Aramburu* as controlling because Sprint cited the case in support of its *in limine* motion. But neither party's submissions to the District Court suggested that *Aramburu* was controlling. Sprint's memorandum in support of its motion mentioned the case only in a string citation, and not for the proposition that only "similarly situated" witnesses' testimony would be admissible.[2] App. 163a. Mendelsohn did not cite the case in her memorandum in opposition, see *id.*, at 208a, and Sprint did not address it in its reply brief, see *id.*, at 221a.

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[1] Although, as noted above, the parties do not address in their filings before this Court the grounds on which we base our decision, we shall consider the relevant arguments they made before the Court of Appeals.

[2] Even if Sprint had argued that *Aramburu* requires a *per se* rule excluding such evidence, it would be inappropriate for the reviewing court to assume, absent indication in the District Court's opinion, that the lower court adopted a party's incorrect argument. Cf. *Lawrence* v. *Chater*, 516 U. S. 163, 183 (1996) (SCALIA, J., dissenting) ("[W]e should not assume that a court of appeals has adopted a legal position only because [a party] supported it").

Mendelsohn further argued that the District Court's use of the phrase "similarly situated," also used in *Aramburu*, evidenced its reliance on that case. Although the District Court used the same phrase, we decline to read the District Court's decision as relying on a case that was not controlling. *Aramburu* defined the phrase "similarly situated" in the entirely different context of a plaintiff's allegation that nonminority employees were treated more favorably than minority employees. 112 F. 3d, at 1403–1406. Absent reason to do so, we should not assume the District Court adopted that "similarly situated" analysis when it addressed a very different kind of evidence. An appellate court should not presume that a district court intended an incorrect legal result when the order is equally susceptible of a correct reading, particularly when the applicable standard of review is deferential.

Mendelsohn additionally argued that the District Court must have meant to apply such a rule because that was the nature of the argument in Sprint's *in limine* motion. But the *in limine* motion did not suggest that the evidence is never admissible; it simply argued that such evidence lacked sufficient probative value "in this case" to be relevant or outweigh prejudice and delay. App. 156a.

When a district court's language is ambiguous, as it was here, it is improper for the court of appeals to presume that the lower court reached an incorrect legal conclusion. A remand directing the district court to clarify its order is generally permissible and would have been the better approach in this case.

B

In the Court of Appeals' view, the District Court excluded the evidence as *per se* irrelevant, and so had no occasion to reach the question whether such evidence, if relevant, should be excluded under Rule 403. The Court of Appeals, upon concluding that such evidence was not *per se* irrelevant, de-

cided that it was relevant in the circumstances of this case and undertook its own balancing under Rule 403. But questions of relevance and prejudice are for the District Court to determine in the first instance. *Abel*, 469 U. S., at 54 ("Assessing the probative value of [evidence], and weighing any factors counseling against admissibility is a matter first for the district court's sound judgment under Rules 401 and 403 . . . "). Rather than assess the relevance of the evidence itself and conduct its own balancing of its probative value and potential prejudicial effect, the Court of Appeals should have allowed the District Court to make these determinations in the first instance, explicitly and on the record.[3] See *Pullman-Standard* v. *Swint*, 456 U. S. 273, 291 (1982) (When a district court "fail[s] to make a finding because of an erroneous view of the law, the usual rule is that there should be a remand for further proceedings to permit the trial court to make the missing findings"). With respect to evidentiary questions in general and Rule 403 in particular, a district court virtually always is in the better position to assess the admissibility of the evidence in the context of the particular case before it.

We note that, had the District Court applied a *per se* rule excluding the evidence, the Court of Appeals would have been correct to conclude that it had abused its discretion. Relevance and prejudice under Rules 401 and 403 are determined in the context of the facts and arguments in a particular case, and thus are generally not amenable to broad *per se* rules. See Advisory Committee's Notes on Fed. Rule Evid. 401, 28 U. S. C. App., p. 864 ("Relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly

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[3]The only exception to this rule is when "the record permits only one resolution of the factual issue." *Pullman-Standard* v. *Swint*, 456 U. S. 273, 292 (1982). The evidence here, however, is not of that dispositive character.

provable in the case"). But, as we have discussed, there is no basis in the record for concluding that the District Court applied a blanket rule.

III

The question whether evidence of discrimination by other supervisors is relevant in an individual ADEA case is fact based and depends on many factors, including how closely related the evidence is to the plaintiff's circumstances and theory of the case. Applying Rule 403 to determine if evidence is prejudicial also requires a fact-intensive, context-specific inquiry. Because Rules 401 and 403 do not make such evidence *per se* admissible or *per se* inadmissible, and because the inquiry required by those Rules is within the province of the District Court in the first instance, we vacate the judgment of the Court of Appeals and remand the case with instructions to have the District Court clarify the basis for its evidentiary ruling under the applicable Rules.

It is so ordered.

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FEDERAL EXPRESS CORP. *v.* HOLOWECKI ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 06–1322. Argued November 6, 2007—Decided February 27, 2008

The Age Discrimination in Employment Act of 1967 (ADEA) requires that "[n]o civil action . . . be commenced . . . until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission" (EEOC), 29 U. S. C. §626(d), but does not define the term "charge." After petitioner delivery service (FedEx) initiated programs tying its couriers' compensation and continued employment to certain performance benchmarks, respondent Kennedy (hereinafter respondent), a FedEx courier over age 40, filed with the EEOC, in December 2001, a Form 283 "Intake Questionnaire" and a detailed affidavit supporting her contention that the FedEx programs discriminated against older couriers in violation of the ADEA. In April 2002, respondent and others filed this ADEA suit claiming, *inter alia*, that the programs were veiled attempts to force out, harass, and discriminate against older couriers. FedEx moved to dismiss respondent's action, contending she had not filed the "charge" required by §626(d). Respondent countered that her Form 283 and affidavit constituted a valid charge, but the District Court disagreed and granted FedEx's motion. The Second Circuit reversed.

Held:

1. In addition to the information required by the implementing regulations, *i. e.*, an allegation of age discrimination and the name of the charged party, if a filing is to be deemed a "charge" under the ADEA it must be reasonably construed as a request for the agency to take remedial action to protect the employee's rights or otherwise settle a dispute between the employer and the employee. Pp. 395–404.

(a) There is little dispute that the EEOC's regulations—so far as they go—are reasonable constructions of the statutory term "charge" and are therefore entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–845. However, while the regulations give some content to the term charge, they fall short of a comprehensive definition. Thus, the issue is the guidance the regulations give. Title 29 CFR §1626.3 says: "*charge* shall mean a statement filed with the [EEOC] which alleges that the named prospective defendant has engaged in or is about to engage in actions in violation of the Act." Section 1626.8(a) identifies information a "charge

should contain," including: the employee's and employer's names, addresses, and phone numbers; an allegation that the employee was the victim of age discrimination; the number of employees of the charged employer; and a statement indicating whether the charging party has initiated state proceedings. Section 1626.8(b), however, seems to qualify these requirements by stating that a charge is "sufficient" if it meets the requirements of § 1626.6—*i. e.*, if it is "in writing and . . . name[s] the prospective respondent and . . . generally allege[s] the discriminatory act(s)." That the meaning of charge remains unclear, even with the regulations, is evidenced by the differing positions of the parties and the Courts of Appeals on the matter. Pp. 395–396.

(b) Just as this Court defers to reasonable statutory interpretations, an agency is entitled to deference when it adopts a reasonable interpretation of its regulations, unless its position is "'plainly erroneous or inconsistent with the regulation,'" *Auer* v. *Robbins*, 519 U. S. 452, 461. The Court accords such deference to the EEOC's position that its regulations identify certain requirements for a charge but do not provide an exhaustive definition. It follows that a document meeting § 1626.6's requirements is not a charge in every instance. The language in §§ 1626.6 and 1626.8 cannot be viewed in isolation from the rest of the regulations. While the regulations' structure is less than clear, the relevant provisions are grouped under the title, "Procedures—Age Discrimination in Employment Act." A permissible reading is that the regulations identify the procedures for filing a charge but do not state the full contents of a charge. Pp. 396–397.

(c) That does not resolve this case because the regulations do not state what additional elements are required in a charge. The EEOC submits, in accordance with a position it has adopted in internal directives over the years, that the proper test is whether a filing, taken as a whole, should be construed as a request by the employee for the EEOC to take whatever action is necessary to vindicate her rights. Pp. 398–399.

(d) The EEOC acted within its authority in formulating its request-to-act requirement. The agency's policy statements, embodied in its compliance manual and internal directives, interpret not only its regulations but also the statute itself. Assuming these interpretive statements are not entitled to full *Chevron* deference, they nevertheless are entitled to a "measure of respect" under the less deferential standard of *Skidmore* v. *Swift & Co.*, 323 U. S. 134, see *Alaska Dept. of Environmental Conservation* v. *EPA*, 540 U. S. 461, 487, whereby the Court considers whether the agency has consistently applied its position, *e. g.*, *United States* v. *Mead Corp.*, 533 U. S. 218, 228. Here, the relevant interpretive statement has been binding on EEOC staff for at least five years. True, the agency's implementation has been uneven; *e. g.*, its

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field office did not treat respondent's filing as a charge, and, as a result, she filed suit before the EEOC could initiate conciliation with FedEx. Such undoubted deficiencies are not enough, however, to deprive an agency that processes over 175,000 inquiries a year of all judicial deference. Moreover, the charge must be defined in a way that allows the agency to fulfill its distinct statutory functions of enforcing antidiscrimination laws, see 29 U. S. C. §626(d), and disseminating information about those laws to the public, see, *e. g.*, Civil Rights Act of 1964, §§705(i), 705(g)(3). Pp. 399–403.

(c) FedEx's view that because the EEOC must act "[u]pon receiving . . . a charge," 29 U. S. C. §626(d), its failure to do so means the filing is not a charge, is rejected as too artificial a reading of the ADEA. The statute requires the aggrieved individual to file a charge before filing a lawsuit; it does not condition the individual's right to sue upon the agency taking any action. Cf. *Edelman* v. *Lynchburg College*, 535 U. S. 106, 112–113. Moreover, because the filing of a charge determines when the ADEA's time limits and procedural mechanisms commence, it would be illogical and impractical to make the definition of charge dependent upon a condition subsequent over which the parties have no control. Cf. *Logan* v. *Zimmerman Brush Co.*, 455 U. S. 422, 444. Pp. 403–404.

2. The agency's determination that respondent's December 2001 filing was a charge is a reasonable exercise of its authority to apply its own regulations and procedures in the course of the routine administration of the statute it enforces. Pp. 404–407.

(a) Respondent's completed Form 283 contained all the information outlined in 29 CFR §1626.8, and, although the form did not itself request agency action, the accompanying affidavit asked the EEOC to "force [FedEx] to end [its] age discrimination plan." FedEx contends unpersuasively that, in context, the latter statement is ambiguous because the affidavit also stated: "I have been . . . assur[ed] by [the EEOC] that this Affidavit will be considered confidential . . . and will not be disclosed . . . unless it becomes necessary . . . to produce the affidavit in a formal proceeding." This argument reads too much into the nondisclosure assurances. Respondent did not request the EEOC to avoid contacting FedEx, but stated only her understanding that the affidavit itself would be kept confidential and, even then, consented to disclosure of the affidavit in a "formal proceeding." Furthermore, respondent checked a box on the Form 283 giving consent for the EEOC to disclose her identity to FedEx. The fact that respondent filed a formal charge with the EEOC after she filed her District Court complaint is irrelevant because postfiling conduct does not nullify an earlier, proper charge. Pp. 404–406.

(b) Because the EEOC failed to treat respondent's filing as a charge in the first instance, both sides lost the benefits of the ADEA's informal dispute resolution process. The court that hears the merits can attempt to remedy this deficiency by staying the proceedings to allow an opportunity for conciliation and settlement. While that remedy is imperfect, it is unavoidable in this case. However, the ultimate responsibility for establishing a clearer, more consistent process lies with the EEOC, which should determine, in the first instance, what revisions to its forms and processes are necessary or appropriate to reduce the risk of future misunderstandings by those who seek its assistance. Pp. 406–407.

440 F. 3d 558, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SOUTER, GINSBURG, BREYER, and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, *post*, p. 408.

Connie Lewis Lensing argued the cause for petitioner. With her on the briefs were *R. Jeffery Kelsey*, *Edward J. Efkeman*, *Robert K. Spotswood*, *Walter E. Dellinger*, *Pamela Harris*, and *Jonathan Hacker*.

David L. Rose argued the cause for respondents. With him on the brief was *Joshua N. Rose*.

Toby J. Heytens argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Acting Solicitor General Garre*, *Acting Assistant Attorney General Comisac*, *Dennis J. Dimsey*, *Lisa J. Stark*, *Ronald S. Cooper*, and *Anne Noel Occhialino*.*

JUSTICE KENNEDY delivered the opinion of the Court.

This case arises under the Age Discrimination in Employment Act of 1967 (ADEA or Act), 81 Stat. 602, as amended,

*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America by *Lawrence Z. Lorber*, *James F. Segroves*, *Robin S. Conrad*, and *Shane Brennan*; and for the Equal Employment Advisory Council et al. by *Rae T. Vann*, *Laura Anne Gianturis*, and *Karen R. Harned*.

Paul W. Mollica filed a brief for AARP et al. as *amici curiae* urging affirmance.

29 U. S. C. §621 *et seq.* When an employee files "a charge alleging unlawful [age] discrimination" with the Equal Employment Opportunity Commission (EEOC), the charge sets the Act's enforcement mechanisms in motion, commencing a waiting period during which the employee cannot file suit. The phrase, "a charge alleging unlawful discrimination," is used in the statute, §626(d), and "charge" appears in the agency's implementing regulations; but it has no statutory definition. In deciding what constitutes a charge under the Act the Courts of Appeals have adopted different definitions. As a result, difficulties have arisen in determining when employees may seek relief under the ADEA in courts of competent jurisdiction.

As a cautionary preface, we note that the EEOC enforcement mechanisms and statutory waiting periods for ADEA claims differ in some respects from those pertaining to other statutes the EEOC enforces, such as Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. §2000e *et seq.*, and the Americans with Disabilities Act of 1990, 104 Stat. 327, as amended, 42 U. S. C. §12101 *et seq.* While there may be areas of common definition, employees and their counsel must be careful not to apply rules applicable under one statute to a different statute without careful and critical examination. Cf. *General Dynamics Land Systems, Inc.* v. *Cline*, 540 U. S. 581, 586–587 (2004). This is so even if the EEOC forms and the same definition of charge apply in more than one type of discrimination case.

I

Petitioner, Federal Express Corporation (FedEx), provides mail pickup and delivery services to customers worldwide. In 1994 and 1995, FedEx initiated two programs, designed, it says, to make its 45,000-strong courier network more productive. The programs, "Best Practice Pays" (BPP) and "Minimum Acceptable Performance Standards"

(MAPS), tied the couriers' compensation and continued employment to certain performance benchmarks, for instance the number of stops a courier makes per day.

Respondents are 14 current and former FedEx couriers over the age of 40. They filed suit in the United States District Court for the Southern District of New York on April 30, 2002, claiming, *inter alia*, that BPP and MAPS violate the ADEA. Asserting that their claims were typical of many couriers nationwide, respondents sought to represent a plaintiffs' class of all couriers over the age of 40 who were subject to alleged acts of age discrimination by FedEx. The suit maintains that BPP and MAPS were veiled attempts to force older workers out of the company before they would be entitled to receive retirement benefits. FedEx, it is alleged, used the initiatives as a pretext for harassing and discriminating against older couriers in favor of younger ones.

The immediate question before us is the timeliness of the suit filed by one of the plaintiffs below, Patricia Kennedy, referred to here as "respondent." Petitioner moved to dismiss respondent's action, contending respondent had not filed her charge with the EEOC at least 60 days before filing suit, as required by 29 U. S. C. §626(d). Respondent countered that she filed a valid charge on December 11, 2001, by submitting EEOC Form 283.

The agency labels Form 283 an "Intake Questionnaire." Respondent attached to the questionnaire a signed affidavit describing the alleged discriminatory employment practices in greater detail. The District Court determined these documents were not a charge and granted the motion to dismiss. No. 02 Civ. 3355(LMM) (SDNY, Oct. 9, 2002), App. to Pet. for Cert. 39a. An appeal followed, and the Court of Appeals for the Second Circuit reversed. See 440 F. 3d 558, 570 (2006). We granted certiorari to consider whether respondent's filing was a charge, 551 U. S. 1102 (2007), and we now affirm.

II

This case presents two distinct questions: What is a charge as the ADEA uses that term? And were the documents respondent filed in December 2001 a charge?

A

The relevant statutory provision states:

> "No civil action may be commenced by an individual under [the ADEA] until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. . . .
>
> . . . . . .
>
> "Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion." 29 U. S. C. §626(d).

The Act does not define charge. While EEOC regulations give some content to the term, they fall short of a comprehensive definition. The agency has statutory authority to issue regulations, see §628; and when an agency invokes its authority to issue regulations, which then interpret ambiguous statutory terms, the courts defer to its reasonable interpretations. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–845 (1984). The regulations the agency has adopted—so far as they go—are reasonable constructions of the term charge. There is little dispute about this. The issue is the guidance the regulations give.

One of the regulations, 29 CFR §1626.3 (2007), is entitled "Other definitions." It says: "*charge* shall mean a statement filed with the Commission by or on behalf of an aggrieved person which alleges that the named prospective defendant

has engaged in or is about to engage in actions in violation of the Act." Section 1626.8(a) identifies five pieces of information a "charge should contain": (1)–(2) the names, addresses, and telephone numbers of the person making the charge and the charged entity; (3) a statement of facts describing the alleged discriminatory act; (4) the number of employees of the charged employer; and (5) a statement indicating whether the charging party has initiated state proceedings. The next subsection, § 1626.8(b), however, seems to qualify these requirements by stating that a charge is "sufficient" if it meets the requirements of § 1626.6—*i. e.*, if it is "in writing and . . . name[s] the prospective respondent and . . . generally allege[s] the discriminatory act(s)."

Even with the aid of the regulations the meaning of charge remains unclear, as is evident from the differing positions of the parties now before us and in the Courts of Appeals. Petitioner contends an Intake Questionnaire cannot be a charge unless the EEOC acts upon it. On the other hand some Courts of Appeals, including the Court of Appeals for the Second Circuit, take a position similar to the Government's in this case, that an Intake Questionnaire can constitute a charge if it expresses the filer's intent to activate the EEOC's enforcement processes. See, *e. g.*, *Steffen* v. *Meridian Life Ins. Co.*, 859 F. 2d 534, 542 (CA7 1988). A third view, which seems to accord with respondent's position, is that all completed Intake Questionnaires are charges. See, *e. g.*, *Casavantes* v. *California State Univ., Sacramento*, 732 F. 2d 1441, 1443 (CA9 1984).

B

In support of her position that the Intake Questionnaire she filed, taken together with the attached six-page affidavit, meets the regulatory definition of a charge, respondent places considerable emphasis on what might be described as the regulations' catchall or saving provision, 29 CFR § 1626.8(b). This seems to require only a written document

with a general allegation of discriminatory conduct by a named employer. Respondent points out that, when read together, §§ 1626.8(b) and 1626.6 say that a "charge is sufficient when the Commission receives . . . a written statement" that "name[s] the [employer] and . . . generally allege[s] the discriminatory act(s)." Respondent views this language as unequivocal and sees no basis for requiring that a charge contain any additional information.

The EEOC's view, as expressed in the Government's *amicus* brief, however, is that the regulations identify certain requirements for a charge but do not provide an exhaustive definition. As such, not all documents that meet the minimal requirements of § 1626.6 are charges.

The question, then, becomes how to interpret the scope of the regulations. Just as we defer to an agency's reasonable interpretations of the statute when it issues regulations in the first instance, see *Chevron*, *supra*, the agency is entitled to further deference when it adopts a reasonable interpretation of regulations it has put in force. See *Auer* v. *Robbins*, 519 U. S. 452 (1997). Under *Auer*, we accept the agency's position unless it is "'"plainly erroneous or inconsistent with the regulation."'" *Id.*, at 461 (quoting *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 359 (1989)).

In accord with this standard we accept the agency's position that the regulations do not identify all necessary components of a charge; and it follows that a document meeting the requirements of § 1626.6 is not a charge in every instance. The language in §§ 1626.6 and 1626.8 cannot be viewed in isolation from the rest of the regulations. True, the structure of the regulations is less than clear. But the relevant provisions are grouped under the title, "Procedures—Age Discrimination in Employment Act." A permissible reading is that the regulations identify the procedures for filing a charge but do not state the full contents a charge document must contain. This is the agency's position, and we defer to it under *Auer*.

C

This does not resolve the case. While we agree with the Government that the regulations do not state all the elements a charge must contain, the question of what additional elements are required remains. On this point the regulations are silent.

The EEOC submits that the proper test for determining whether a filing is a charge is whether the filing, taken as a whole, should be construed as a request by the employee for the agency to take whatever action is necessary to vindicate her rights. Brief for United States as *Amicus Curiae* 15. The EEOC has adopted this position in the Government's *amicus* brief and in various internal directives it has issued to its field offices over the years. See 1 EEOC Compliance Manual §2.2(b), p. 2:0001 (Aug. 2002); Memorandum from Elizabeth M. Thornton, Director, Office of Field Programs, EEOC, to All District, Area, and Local Office Directors et al. (Feb. 21, 2002), online at http://www.eeoc.gov/charge/memo-2-21-02.html (hereinafter Thornton Memo) (all Internet materials as visited Feb. 21, 2008, and available in Clerk of Court's case file); Memorandum from Nicholas M. Inzeo, Director, Office of Field Programs, EEOC, to All District, Field, Area, and Local Office Directors et al. (Aug. 13, 2007), online at http://www.eeoc.gov/charge/memo-8-13-07.html. The Government asserts that this request-to-act requirement is a reasonable extrapolation of the agency's regulations and that, as a result, the agency's position is dispositive under *Auer*.

The Government acknowledges the regulations do not, on their face, speak to the filer's intent. To the extent the request-to-act requirement can be derived from the text of the regulations, it must spring from the term charge. But, in this context, the term charge is not a construct of the agency's regulations. It is a term Congress used in the underlying statute that has been incorporated in the regulations by the agency. Thus, insofar as they speak to the fil-

er's intent, the regulations do so by repeating language from the underlying statute. It could be argued, then, that this case can be distinguished from *Auer*. See *Gonzales* v. *Oregon*, 546 U. S. 243, 257 (2006) (the "near equivalence of the statute and regulation belies [the case for] *Auer* deference"); *Christensen* v. *Harris County*, 529 U. S. 576, 588 (2000) (an agency cannot "under the guise of interpreting a regulation . . . create *de facto* a new regulation").

It is not necessary to hold that *Auer* deference applies to the agency's construction of the term charge as it is used in the regulations, however. For even if *Auer* deference is inapplicable, we would accept the agency's proposed construction of the statutory term, and we turn next to the reasons for this conclusion.

D

In our view the agency's policy statements, embodied in its compliance manual and internal directives, interpret not only the regulations but also the statute itself. Assuming these interpretive statements are not entitled to full *Chevron* deference, they do reflect "'a body of experience and informed judgment to which courts and litigants may properly resort for guidance.'" *Bragdon* v. *Abbott*, 524 U. S. 624, 642 (1998) (quoting *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 139–140 (1944)). As such, they are entitled to a "measure of respect" under the less deferential *Skidmore* standard. *Alaska Dept. of Environmental Conservation* v. *EPA*, 540 U. S. 461, 487, 488 (2004); *United States* v. *Mead Corp.*, 533 U. S. 218, 227–239 (2001).

Under *Skidmore*, we consider whether the agency has applied its position with consistency. *Mead Corp.*, *supra*, at 228; *Good Samaritan Hospital* v. *Shalala*, 508 U. S. 402, 417 (1993). Here, the relevant interpretive statement, embodied in the compliance manual and memoranda, has been binding on EEOC staff for at least five years. See Thornton Memo, *supra*. True, as the Government concedes, the agency's implementation of this policy has been uneven. See Brief for

United States as *Amicus Curiae* 25. In the very case before us the EEOC's Tampa field office did not treat respondent's filing as a charge, as the Government now maintains it should have done. And, as a result, respondent filed suit before the agency could initiate a conciliation process with the employer.

These undoubted deficiencies in the agency's administration of the statute and its regulatory scheme are not enough, however, to deprive the agency of all judicial deference. Some degree of inconsistent treatment is unavoidable when the agency processes over 175,000 inquiries a year. *Id.*, at 19, n. 10. And although one of the policy memoranda the Government relies upon was circulated after we granted certiorari, the position the document takes is consistent with the EEOC's previous directives. We see no reason to assume the agency's position—that a charge is filed when the employee requests some action—was framed for the specific purpose of aiding a party in this litigation. Cf. *Bowen* v. *Georgetown Univ. Hospital*, 488 U. S. 204, 212–213 (1988).

The EEOC, moreover, has drawn our attention to the need to define charge in a way that allows the agency to fulfill its distinct statutory functions of enforcing antidiscrimination laws and disseminating information about those laws to the public. Cf. *Barnhart* v. *Walton*, 535 U. S. 212, 225 (2002) (noting that deference is appropriate in "matters of detail related to [an agency's] administration" of a statute). The agency's duty to initiate informal dispute resolution processes upon receipt of a charge is mandatory in the ADEA context. See 29 U. S. C. §626(d) ("[T]he Commission . . . shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion"); Cf. *Lopez* v. *Davis*, 531 U. S. 230, 241 (2001) (noting that Congress' use of the term "'shall'" indicates an intent to "impose discretionless obligations"). Yet, at the same time, Congress intended the agency to serve an "educational" function. See Civil Rights Act of 1964, §705(i), 78 Stat. 259;

id., § 705(g)(3) (noting that the Commission shall have the power to "furnish to persons subject to this title such technical assistance as they may request"). Providing answers to the public's questions is a critical part of the EEOC's mission; and it accounts for a substantial part of the agency's work. Of about 175,000 inquiries the agency receives each year, it dockets around 76,000 of these as charges. Brief for United States as *Amicus Curiae* 19, n. 10. Even allowing for errors in the classification of charges and noncharges, it is evident that many filings come from individuals who have questions about their rights and simply want information.

For efficient operations, and to effect congressional intent, the agency requires some mechanism to separate information requests from enforcement requests. Respondent's proposed standard, that a charge need contain only an allegation of discrimination and the name of the employer, falls short in this regard. Were that stripped-down standard to prevail, individuals who approach the agency with questions could end up divulging enough information to create a charge. This likely would be the case for anyone who completes an Intake Questionnaire—which provides space to indicate the name and address of the offending employer and asks the individual to answer the question, "What action was taken against you that you believe to be discrimination?" App. to Pet. for Cert. 43a. If an individual knows that reporting this minimal information to the agency will mandate the agency to notify her employer, she may be discouraged from consulting the agency or wait until her employment situation has become so untenable that conciliation efforts would be futile. The result would be contrary to Congress' expressed desire that the EEOC act as an information provider and try to settle employment disputes through informal means.

For these reasons, the definition of charge respondent advocates—*i. e.*, that it need conform only to 29 CFR § 1626.6—is in considerable tension with the structure and purposes of the ADEA. The agency's interpretive position—the

request-to-act requirement—provides a reasonable alternative that is consistent with the statutory framework. No clearer alternatives are within our authority or expertise to adopt; and so deference to the agency is appropriate under *Skidmore*. We conclude as follows: In addition to the information required by the regulations, *i. e.*, an allegation and the name of the charged party, if a filing is to be deemed a charge it must be reasonably construed as a request for the agency to take remedial action to protect the employee's rights or otherwise settle a dispute between the employer and the employee.

Some Courts of Appeals have referred to a "'manifest intent'" test, under which, in order to be deemed a charge, the filing must demonstrate "an individual's intent to have the agency initiate its investigatory and conciliatory processes." 440 F. 3d, at 566 (case below); see also *Wilkerson* v. *Grinnell Corp.*, 270 F. 3d 1314, 1319 (CA11 2001); *Steffen*, 859 F. 2d, at 543; *Bihler* v. *Singer Co.*, 710 F. 2d 96, 99 (CA3 1983). If this formulation suggests the filer's state of mind is somehow determinative, it misses the point. If, however, it means the filing must be examined from the standpoint of an objective observer to determine whether, by a reasonable construction of its terms, the filer requests the agency to activate its machinery and remedial processes, that would be in accord with our conclusion.

It is true that under this permissive standard a wide range of documents might be classified as charges. But this result is consistent with the design and purpose of the ADEA. Even in the formal litigation context, *pro se* litigants are held to a lesser pleading standard than other parties. See *Estelle* v. *Gamble*, 429 U. S. 97, 106 (1976) (*Pro se* pleadings are to be "liberally construed"). In the administrative context now before us it appears *pro se* filings may be the rule, not the exception. The ADEA, like Title VII, sets up a "remedial scheme in which laypersons, rather than lawyers, are expected to initiate the process." *EEOC* v. *Commercial Of-*

fice Products Co., 486 U. S. 107, 124 (1988); see also *Oscar Mayer & Co.* v. *Evans*, 441 U. S. 750, 756 (1979) (noting the "common purpose" of Title VII and the ADEA). The system must be accessible to individuals who have no detailed knowledge of the relevant statutory mechanisms and agency processes. It thus is consistent with the purposes of the Act that a charge can be a form, easy to complete, or an informal document, easy to draft. The agency's proposed test implements these purposes.

Reasonable arguments can be made that the agency should adopt a standard giving more guidance to filers, making it clear that the request to act must be stated in quite explicit terms. A rule of that sort might yield more consistent results. This, however, is a matter for the agency to decide in light of its experience and expertise in protecting the rights of those who are covered by the Act. For its decisions in this regard the agency is subject to the oversight of the political branches. Cf. *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 980 (2005) ("Filling these gaps [in ambiguous statutes] involves difficult policy choices that agencies are better equipped to make than courts"). We find no reason in this case to depart from our usual rule: Where ambiguities in statutory analysis and application are presented, the agency may choose among reasonable alternatives.

E

Asserting its interest as an employer, petitioner urges us to condition the definition of charge, and hence an employee's ability to sue, upon the EEOC's fulfilling its mandatory duty to notify the charged party and initiate a conciliation process. In petitioner's view, because the Commission must act "[u]pon receiving such a charge," 29 U. S. C. §626(d), its failure to do so means the filing is not a charge.

The agency rejects this view, as do we. As a textual matter, the proposal is too artificial a reading of the statute to accept. The statute requires the aggrieved individual to file

a charge before filing a lawsuit; it does not condition the individual's right to sue upon the agency taking any action. *Ibid.* ("No civil action may be commenced by an individual under [the ADEA] until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission"); Cf. *Edelman* v. *Lynchburg College*, 535 U. S. 106, 112–113 (2002) (rejecting the argument that a charge is not a charge until the filer satisfies Title VII's oath or affirmation requirement). The filing of a charge, moreover, determines when the Act's time limits and procedural mechanisms commence. It would be illogical and impractical to make the definition of charge dependent upon a condition subsequent over which the parties have no control. Cf. *Logan* v. *Zimmerman Brush Co.*, 455 U. S. 422, 444 (1982) (Powell, J., concurring in judgment).

III

Having determined that the agency acted within its authority in formulating the rule that a filing is deemed a charge if the document reasonably can be construed to request agency action and appropriate relief on the employee's behalf, the question is whether the filing here meets this test. The agency says it does, and we agree. The agency's determination is a reasonable exercise of its authority to apply its own regulations and procedures in the course of the routine administration of the statute it enforces.

Respondent's completed intake form contained all of the information outlined in 29 CFR § 1626.8, including: the employee's name, address, and telephone number, as well as those of her employer; an allegation that she and other employees had been the victims of "age discrimination"; the number of employees who worked at the Dunedin, Florida, facility where she was stationed; and a statement indicating she had not sought the assistance of any government agency regarding this matter. See App. 265.

Petitioner maintains the filing was still deficient because it contained no request for the agency to act. Were the Intake Questionnaire the only document before us we might agree its handwritten statements do not request action. The design of the form in use in 2001, moreover, does not give rise to the inference that the employee requests action against the employer. Unlike EEOC Form 5, the Intake Questionnaire is not labeled a "Charge of Discrimination," see *id.*, at 275. In fact the wording of the questionnaire suggests the opposite: that the form's purpose is to facilitate "pre-charge filing counseling" and to enable the agency to determine whether it has jurisdiction over "potential charges." *Id.*, at 265. There might be instances where the indicated discrimination is so clear or pervasive that the agency could infer from the allegations themselves that action is requested and required, but the agency is not required to treat every completed Intake Questionnaire as a charge.

In this case, however, the completed questionnaire filed in December 2001 was supplemented with a detailed six-page affidavit. At the end of the last page, respondent asked the agency to "[p]lease force Federal Express to end their age discrimination plan so we can finish out our careers absent the unfairness and hostile work environment created within their application of *Best Practice/High-Velocity Culture Change*." *Id.*, at 273. This is properly construed as a request for the agency to act.

Petitioner says that, in context, the statement is ambiguous. It points to respondent's accompanying statement that "I have been given assurances by an Agent of the U. S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding." *Id.*, at 266. Petitioner argues that if respondent intended the affidavit to

be kept confidential, she could not have expected the agency to treat it as a charge. This reads too much into the assurance of nondisclosure. Respondent did not request the agency to avoid contacting her employer. She stated only her understanding that the affidavit itself would be kept confidential. Even then, she gave consent for the agency to disclose the affidavit in a "formal proceeding." Furthermore, respondent checked a box on the Intake Questionnaire giving consent for the agency to disclose her identity to the employer. *Id.*, at 265. Here the combination of the waiver and respondent's request in the affidavit that the agency "force" the employer to stop discriminating against her were enough to bring the entire filing within the definition of charge we adopt here.

Petitioner notes that respondent did file a Form 5 (a formal charge) with the EEOC but only after she filed her complaint in the District Court. This shows, petitioner argues, that respondent did not intend the earlier December 2001 filing to be a charge; otherwise, there would have been no reason for the later filing. What matters, however, is whether the documents filed in December 2001 should be interpreted as a request for the agency to act. Postfiling conduct does not nullify an earlier, proper charge.

Documents filed by an employee with the EEOC should be construed, to the extent consistent with permissible rules of interpretation, to protect the employee's rights and statutory remedies. Construing ambiguities against the drafter may be the more efficient rule to encourage precise expression in other contexts; here, however, the rule would undermine the remedial scheme Congress adopted. It would encourage individuals to avoid filing errors by retaining counsel, increasing both the cost and likelihood of litigation.

IV

The Federal Government interacts with individual citizens through all but countless forms, schedules, manuals, and

worksheets. Congress, in most cases, delegates the format and design of these instruments to the agencies that administer the relevant laws and processes. An assumption underlying the congressional decision to delegate rulemaking and enforcement authority to the agency, and the consequent judicial rule of deference to the agency's determinations, is that the agency will take all efforts to ensure that affected parties will receive the full benefits and protections of the law. Here, because the agency failed to treat respondent's filing as a charge in the first instance, both sides lost the benefits of the ADEA's informal dispute resolution process.

The employer's interests, in particular, were given short shrift, for it was not notified of respondent's complaint until she filed suit. The court that hears the merits of this litigation can attempt to remedy this deficiency by staying the proceedings to allow an opportunity for conciliation and settlement. True, that remedy would be imperfect. Once the adversary process has begun a dispute may be in a more rigid cast than if conciliation had been attempted at the outset.

This result is unfortunate, but, at least in this case, unavoidable. While courts will use their powers to fashion the best relief possible in situations like this one, the ultimate responsibility for establishing a clearer, more consistent process lies with the agency. The agency already has made some changes to the charge-filing process. See Brief for United States as *Amicus Curiae* 3, n. 2 (noting that the Intake Questionnaire form respondent filed has been replaced with a reworded form). To reduce the risk of further misunderstandings by those who seek its assistance, the agency should determine, in the first instance, what additional revisions in its forms and processes are necessary or appropriate.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

Today the Court decides that a "charge" of age discrimination under the Age Discrimination in Employment Act of 1967 (ADEA) is whatever the Equal Employment Opportunity Commission (EEOC) says it is. The filing at issue in this case did not state that it was a charge and did not include a charge form; to the contrary, it included a form that expressly stated it was for the purpose of "pre-charge" counseling. What is more, the EEOC did not assign it a charge number, notify the employer of the complainant's[1] allegations, or commence enforcement proceedings. Notwithstanding these facts, the Court concludes, counterintuitively, that respondent's filing is a charge because it manifests an intent for the EEOC to take "some action." *Ante*, at 400. Because the standard the Court applies is broader than the ordinary meaning of the term "charge," and because it is so malleable that it effectively absolves the EEOC of its obligation to administer the ADEA according to discernible standards, I respectfully dissent.

I

As the Court notes, the ADEA directs the agency to take certain actions upon receipt of a "charge" but does not define that word. *Ante*, at 395. Because there is nothing to suggest that Congress used "charge" as a term of art, we must construe it "in accordance with its ordinary or natural meaning." See *FDIC* v. *Meyer*, 510 U. S. 471, 476 (1994). Dictionaries define a "charge" as an accusation or indictment.

[1] This opinion will refer to potentially charging parties who contact the EEOC about discrimination as "complainants." I use this term for simplicity and do not intend to invoke the distinction in the EEOC's regulations between complainants and charging parties. See 29 CFR § 1626.3 (2007). Similarly, I use "respondent" not as it appears in the EEOC's regulations—referring to the "prospective defendant in a charge or complaint," *ibid.*—but as a reference to the responding parties in this case.

See, *e. g.*, American Heritage Dictionary 312 (4th ed. 2000); Webster's Third New International Dictionary 377 (1993). In legal parlance, a "charge" is generally a formal allegation of wrongdoing that initiates legal proceedings against an alleged wrongdoer. In criminal law, for example, a charge is defined as "[a] formal accusation of an offense as a preliminary step to prosecution." Black's Law Dictionary 248 (8th ed. 2004). Similarly, in this context, a "charge" is a formal accusation of discrimination that objectively manifests an intent to initiate enforcement proceedings against the employer. Just as a complaint or police report that describes the commission of a crime is not a "charge" under the criminal law, so too here, a document that merely describes the alleged discrimination and requests the EEOC's assistance, but does not objectively manifest an intent to initiate enforcement proceedings, is not a "charge" within the meaning of the ADEA.

This understanding of a "charge" is common in administrative law. The regulations governing allegations of unlawful employment practices at the Government Accountability Office, for example, define "charge" as "any request filed . . . to investigate any matter" within the jurisdiction of the agency. 4 CFR §28.3 (2007). In actions alleging unfair labor practices, the "purpose of the charge is . . . to set in motion the [National Labor Relations] Board's investigative machinery." *Flex Plastics, Inc.*, 262 N. L. R. B. 651, 652 (1982). In accordance with the charge's purpose of triggering an investigation that involves notice to the employer, agencies often indicate that the charge will not be kept confidential. For example, the EEOC anticipates that a charge usually will be released to the employer. See, *e. g.*, 1 EEOC Compliance Manual §2.2(b), p. 2:0001 (Aug. 2002) (hereinafter EEOC Manual) (providing that correspondence may be processed as a charge if, *inter alia*, it "does not express concerns about confidentiality"); *id.*, §3.6, at 3:0001 (June 2001) (noting that "it is EEOC policy to . . . serve the [employer] with a copy

of ADEA charges unless this will impede EEOC's law enforcement functions").

The ordinary understanding of the term "charge" applies equally in the employment discrimination context, where a charge is a formal accusation that an employer has violated, or will violate, employment discrimination laws. See 29 CFR § 1626.3 (2007) (describing a charge as an allegation that an employer "has engaged in or is about to engage in actions in violation of the Act"). The charge is presented to the agency with jurisdiction over such matters—the EEOC—to trigger enforcement proceedings that are intended to eliminate violations of the ADEA. See 29 U. S. C. § 626(d) (directing the agency, upon receipt of a charge, to notify the employer and take steps to eliminate the allegedly unlawful practice). I therefore agree with the EEOC that the statutory term "charge" must mean, at a minimum,[2] a writing that objectively indicates an intent to initiate the agency's enforcement processes. See Brief for United States as *Amicus Curiae* 15 (noting that a charge must "objectively manifest an intent to make a formal accusation" of an ADEA violation).[3] In any event, respondent's documents do not

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[2] I do not mean to foreclose the possibility that the EEOC may include additional elements in its definition, as long as they are reasonable constructions of the statutory term "charge." See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–845 (1984).

[3] As the EEOC acknowledges, its position on whether intent is required has varied over the years. See Brief for United States as *Amicus Curiae* 8, 16–17, n. 8. In 1983, the agency issued its regulations, which contain no intent requirement. Final Procedural Regulations; Age Discrimination in Employment Act, 48 Fed. Reg. 138. Five years later, it argued against an intent requirement as *amicus curiae* in *Steffen* v. *Meridian Life Ins. Co.*, 859 F. 2d 534, 544 (CA7 1988) ("The EEOC, which has appeared as amicus curiae on Steffen's behalf, has supported Steffen's contention that a completed Intake Questionnaire, in and of itself, constitutes a charge"). In 2002, the agency issued an internal memorandum and internal guidance documents including an intent requirement. See Memorandum from Elizabeth M. Thornton, Director, Office of Field Programs, EEOC, to All District, Area, and Local Office Directors et al. (Feb. 21, 2002), online at http://

objectively indicate an intent to initiate the EEOC's processes; any test that construes them otherwise is, in my opinion, an unreasonable construction of the statutory term "charge," and unworthy of deference. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–845 (1984).

II

The cumulative effect of two aspects of respondent's documents, the Court holds, illustrates that she filed a charge of discrimination: first, her request in her affidavit that the agency take action, and second, her marking of a box on the questionnaire form consenting to the release of her identity to her employer, Federal Express Corporation (FedEx). *Ante*, at 405–406. In my view, neither of these factors, separately or together, objectively indicates that respondent intended to initiate the EEOC's processes.

The last substantive paragraph of respondent's affidavit said: "Please force Federal Express to end their age discrimination . . . ." App. 273. But the issue here is not whether respondent wanted the EEOC to cause the com-

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www.eeoc.gov/charge/memo-2-21-02.html (all Internet materials as visited Feb. 22, 2008, and available in Clerk of Court's case file); 1 EEOC Manual §2.2(b), at 2:0001 (noting that correspondence must, *inter alia*, "constitut[e] a clear and timely request for EEOC to act" before it can be construed as a charge). The EEOC contradicted itself four years later, when it again took the position that there was no intent requirement in *Gordon* v. *Shafer Contracting Co.*, 469 F. 3d 1191, 1194 (CA8 2006) ("In an amicus brief, the EEOC urges us to accept such a verified Intake Questionnaire as satisfying the charge requirement"); see also Brief for United States as *Amicus Curiae* 16–17, n. 8. The following year, the EEOC issued another internal memorandum and updated the Frequently Asked Questions section of its Web site, including the intent requirement in each. Memorandum from Nicholas M. Inzeo, Director, Office of Field Programs, EEOC, to All District, Field, Area, and Local Office Directors et al. (Aug. 13, 2007) (hereinafter Inzeo Memorandum), online at http://www.eeoc.gov/charge/memo-8-13-07.html; EEOC Frequently Asked Questions (hereinafter EEOC FAQ), Answer to "How do I file a charge of employment discrimination?" online at https://eeoc.custhelp.com.

pany's compliance by *any* means; it is whether she wanted the EEOC immediately to employ the particular method of enforcement that consists of filing a charge. Her request to "force Federal Express to end their age discrimination" could have been met by the agency's *beginning* the interviewing and counseling process that would ultimately lead to a charge. Or the agency could have proceeded to enforcement without a charge. See *infra*, at 417, n. 5 (discussing the EEOC's authority to investigate age discrimination in the absence of any charge). Alternatively, after receiving indications of repeated violations by a particular company on many intake questionnaires, the agency could have approached the company informally, effectively forcing compliance by the threat of agency litigation. See B. Lindemann & D. Kadue, Age Discrimination in Employment Law 470 (2003) ("The EEOC may commence litigation under the ADEA without having to first file a charge, so long as it has attempted conciliation"). That sort of action would also have satisfied respondent's request. Respondent's statement to the EEOC no more constitutes expression of a present intent to file a charge than her request to a lawyer that he put an end to her employer's discrimination would constitute expression of present intent to file a complaint. The Court is simply wrong to say that a charge must merely request that the agency take "some action," *ante*, at 400, or "whatever action is necessary to vindicate her rights," *ante*, at 398, or unspecified "remedial action to protect the employee's rights," *ante*, at 402. To the contrary, a charge must request that the agency take *the particular form* of remedial action that results from filing a charge.

Aside from revealing the ambiguity in its definition of a "charge," the Court's constructions stretch the term far beyond what it can bear. A mere request for help from a complainant—who, the Court acknowledges, may "have no detailed knowledge of the relevant statutory mechanisms and agency processes," *ante*, at 403—cannot be equated with

an intent to file a charge. The Court's test permits no principled basis for distinguishing a request for the agency to take what might be described as "pre-charge" actions, such as interviewing and counseling, from a request for the agency to commence enforcement proceedings. All are properly considered "agency action," all presumably would be part of the agency's remedial processes, and all are designed to protect the employee's rights. But a complainant's intent to trigger actions unrelated to charge processing plainly cannot form the basis for distinguishing charges from other inquiries because it lacks any grounding in the meaning of the statutory term.

Even if respondent's statement, viewed in isolation, could reasonably be understood as reflecting the requisite intent, it must be viewed in context. It is clear that respondent's filing, taken as a whole, did not amount to a request for the EEOC to commence enforcement proceedings. In fact, respondent's affidavit is replete with indications of an intent *not* to commence formal agency action. The entire first paragraph is an extensive statement that respondent had been assured her affidavit would be kept confidential, App. 266, suggesting that she did not intend the document to initiate enforcement proceedings, which would require the EEOC to notify FedEx of her allegations. See 1 EEOC Manual §2.2(b), at 2:0001 (stating that correspondence expressing concerns about confidentiality should not be treated as a charge). She identified the document as a "complaint." App. 266. And although the document was notarized and respondent attested to its truthfulness, nowhere did she state that she authorized the EEOC to attempt to resolve the dispute. *Id.*, at 266–274. Finally, the affidavit was attached to the intake questionnaire, which also gave no objective indication of any intent to activate the EEOC's enforcement proceedings.

As the Court concedes, the agency would not consider respondent's intake questionnaire a charge. *Ante*, at 405. In-

deed, we are in agreement that the form contains numerous indicators that it will *not* be considered a charge. *Ibid.* (stating that the "design of the form . . . does not give rise to the inference that the employee requests action against the employer," and "[i]n fact the wording of the questionnaire suggests the opposite"). The title of the form, "Intake Questionnaire,"[1] suggests that its purpose is preliminary information gathering, not the filing of a formal charge. Likewise, the statement at the top of the form indicates that further steps are anticipated: "Please answer the following questions, telling us briefly why you have been discriminated against in employment. An officer of the EEOC will talk with you after you complete this form." App. 265. The form gives the complainant the opportunity to keep her identity confidential. *Ibid.* And it contains a Privacy Act statement on the back, prominently referenced on the front of the form, which states that the information provided on the questionnaire "will be used by Commission employees to determine the existence of facts relevant to a decision as to whether the Commission has jurisdiction over *potential charges*, complaints or allegations of employment discrimination and to provide such *pre-charge filing* counseling as is appropriate." *Ibid.* (emphasis added).

The Court apparently believes that these objective indicators are trumped by the fact that respondent marked the

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[1] An apparently more recent version of Form 283 is entitled "Charge Questionnaire," and states that, "[w]hen this form constitutes the only timely written statement of alleg[ed] . . . discrimination, the Commission will, consistent with 29 CFR 1601.12(b) and 29 CFR 1626.8(b), consider it to be a sufficient charge of discrimination under the relevant statute(s)." 1 EEOC Manual, Exh. 1–B, at 1:0006 (June 2001); see also B. Lindemann & D. Kadue, Age Discrimination in Employment Law 477, n. 14 (2003). Although the "Charge Questionnaire" form is dated "Test 10/94," and is the only questionnaire form included in the EEOC Manual, it was not the form respondent used. Her intake questionnaire form was dated 1987. App. 265.

box authorizing the agency to disclose her identity to her employer. That portion of the form states: "Normally, your identity will be disclosed to the organization which allegedly discriminated against you. Do you . . . Consent or . . . not consent to such disclosure?" *Ibid.* Since the form states it is for a narrow purpose and that identities of complainants are normally disclosed, there is no reason to view respondent's checking of the box as converting the form's stated narrow purpose to a broader one.

In comparison to the intake questionnaire, the "Charge of Discrimination" form contains a number of objective indications that it will trigger the agency's enforcement processes. Indeed, its very title clearly indicates that it is a charge, and it contains a space for a charge number. 1 EEOC Manual Exh. 2–C, at 2:0009. Although both forms require the complainant to sign and attest that the information is correct, only the charge of discrimination requests an attestation that the complainant intends to initiate the agency's procedures. Just above the space for the complainant's signature, the form states "I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures." *Ibid.* The form notes "Charging Party" at the bottom of the space for the signature. *Ibid.* And it states on the back that "[t]he purpose of the charge, whether recorded initially on this form or in some other way reduced to writing and later recorded on this form, is to invoke the jurisdiction of the Commission." *Id.*, at 2:0010. Also on the back, under "ROUTINE USES," the charge of discrimination states that "[i]nformation provided on this form will be used by Commission employees to guide the Commission's investigatory activities." *Ibid.* Although the EEOC prefers to receive a completed charge form, see Brief for United States as *Amicus Curiae* 18, n. 9

(noting that "EEOC's preferred practice is indeed to receive a completed Form 5 whenever possible"), another writing could indicate a complainant's intent to commence the EEOC's enforcement processes. But the form chosen by the complainant must be viewed as strong evidence of the complainant's intent, and that evidence should be deemed overcome only if the document, viewed as a whole, compels that conclusion.

For the reasons I have described, respondent's intake questionnaire and attached affidavit do not objectively indicate that she intended to initiate the EEOC's enforcement processes. The Court's conclusion that the two factors "were enough to bring the entire filing within the definition of charge," *ante*, at 406, is not supported by the facts and, in my view, reveals that the Court's standard is sufficiently vacuous to permit the agency's *post hoc* interpretation of a document to control. But we cannot, under the guise of deference, sanction an agency's use of a standard that the agency has not adequately explained. Cf., *e. g.*, *Pearson* v. *Shalala*, 164 F. 3d 650, 660–661 (CADC 1999) (equating an agency's denial of a party's request based on the application of a vague term with simply saying "no" without explanation).

The malleability of the Court's test is further revealed by its statement that "[t]here might be instances where the indicated discrimination is so clear or pervasive that the agency could infer from the allegations themselves that action is requested and required." *Ante*, at 405. The clarity or pervasiveness of alleged discrimination is irrelevant to the employee's intent to file a charge. Although the Court states that the "agency is not required to treat every completed Intake Questionnaire as a charge," *ibid.*, it apparently would permit the EEOC to do so, because under the Court's test the EEOC can infer intent from circumstances—such as "clear

or pervasive" discrimination—that have no grounding in the "intent to act" requirement.[5]

III

Yet another indication that respondent's documents did not objectively manifest an intent to initiate the EEOC's enforcement processes is that the agency did not treat them as a charge. It did not assign a charge number, and it did not notify FedEx or commence its enforcement proceedings. This is not surprising: The EEOC accepts charges via a thorough intake process[6] in which completed intake questionnaires are not typically viewed as charges, but are used to assist the EEOC in developing the charge. A complainant visiting an EEOC office may be asked to complete an intake questionnaire. See EEOC FAQ, Answer to "How do I file a charge of employment discrimination?" online at https://eeoc.custhelp.com. An EEOC investigator then conducts a precharge interview, 1 EEOC Manual §2.4, at 2:0001; 2 B. Lindemann & P. Grossman, Employment Discrimination

[5] Perhaps the Court's statement is intended to address the EEOC's authority to investigate alleged discrimination even in the absence of a charge. Under Title VII, these are called "Commissioner Charges." See, *e. g.*, 29 CFR §1601.11(a). While the ADEA does not provide for such charges, the EEOC has independent authority to investigate age discrimination in the absence of any charge. See 29 U. S. C. §626(a); 29 CFR §1626.4; *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 28 (1991); 1 EEOC Manual §8.1, at 8:0001 (June 2001). If this is what the Court means by its statement that allegations of "clear or pervasive" discrimination may indicate to the agency that action is "required," *ante*, at 405, then it is not clear how it is relevant to the standards at issue in this case for evaluating an individual complainant's filing.

[6] This process, in all respects relevant to this case, has been consistently used by the agency since shortly after it assumed jurisdiction over ADEA actions in 1979. See 1 EEOC Manual §§2.1–2.7, at 2:0001–2:0006 (2002); 2 B. Lindemann & P. Grossman, Employment Discrimination Law 1220 (3d ed. 1996); B. Schlei & P. Grossman, Employment Discrimination Law 939–940, 942, 948 (2d ed. 1983).

Law 1685 (4th ed. 2007), covering a range of topics, including applicable laws, the complainant's allegations and other possibly discriminatory practices, confidentiality, time limits, notice requirements, and private suit rights. See 1 EEOC Manual §§2.4(a)–(g), at 2:0001–2:0003. Using the information contained in the intake questionnaire and gathered during the interview, the investigator drafts the charge on a Form 5 Charge of Discrimination according to specific agency instructions, and also drafts an affidavit containing background data. See *id.*, §2.5, at 2:0003–2:0005. The investigator assigns a charge number and begins the process of serving notice on the employer and investigating the allegations. See 2 Lindemann & Grossman, *supra*, at 1685–1690.

Charges are thus typically completed and filed by the agency, not the complainant. See *Edelman* v. *Lynchburg College*, 535 U. S. 106, 115, n. 9 (2002) ("The general practice of EEOC staff members is to prepare a formal charge of discrimination for the complainant to review and to verify" (citing Brief for United States et al. as *Amici Curiae* 24)); EEOC FAQ, Answers to "Where can I obtain copies of the forms to file a charge?" (stating that the agency's policy is not to provide blank charge forms); "How do I file a charge of employment discrimination?" ("When the field office has all the information it needs, you will be counseled regarding the strengths and weaknesses of a potential charge and/or you will receive a completed charge form (Form 5) for your signature"), online at https://eeoc.custhelp.com. Once the charge is complete, the EEOC notifies the employer of the charge, usually attaching a copy of the completed charge form. 1 EEOC Manual §3.6, at 3:0001 ("While 29 CFR §1626.11 only requires notice to the [employer] that an ADEA charge has been filed, it is EEOC policy to also serve the [employer] with a copy of ADEA charges unless this will impede EEOC's law enforcement functions");

Inzeo Memorandum, online at http://www.eeoc.gov/charge/memo-8-13-07.html.

To be sure, the EEOC is prepared to accept charges by other methods. If the complainant cannot or will not visit an EEOC office, an investigator may conduct the precharge interview and take the charge by telephone, see 1 EEOC Manual §§2.3, 2.4, at 2:0001, but the agency must reduce the allegations to writing before they will be considered a charge, see 29 CFR §1626.8(b) ("[A] charge is sufficient when the Commission receives from the person making the charge either a written statement or information reduced to writing by the Commission that conforms to the requirements of §1626.6"). When the EEOC receives correspondence that is a potential charge, the investigator must contact the complainant and conduct an intake interview. See 1 EEOC Manual §2.2(a), at 2:0001. Alternatively, if the correspondence "contains all information necessary to begin investigating, constitutes a clear and timely request for EEOC to act, and does not express concerns about confidentiality or retaliation," then the investigator may process it as a charge without conducting an interview. See *id.*, §2.2(b), at 2:0001.

Thus, while the EEOC does not typically view an intake questionnaire as a charge, I would not rule out the possibility that, in appropriate circumstances, an intake questionnaire, like other correspondence, could contain the elements necessary to constitute a charge. But an intake questionnaire—even one accompanied by an affidavit—should not be construed as a charge unless it objectively indicates an intent to initiate the EEOC's enforcement processes. As I have explained, respondent's intake questionnaire and attached affidavit fall short of that standard. I would hold that the documents respondent filed with the EEOC were not a charge and thus did not preserve her right to sue.

The implications of the Court's decision will reach far beyond respondent's case. Today's decision does nothing—ab-

solutely nothing—to solve the problem that under the EEOC's current processes no one can tell, *ex ante*, whether a particular filing is or is not a charge. Given the Court's utterly vague criteria, whatever the agency later decides to regard as a charge is a charge—and the statutorily required notice to the employer and conciliation process will be evaded in the future as it has been in this case. The Court's failure to apply a clear and sensible rule renders its decision of little use in future cases to complainants, employers, or the agency.

For these reasons, I would reverse the judgment below.

Syllabus

BOULWARE *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06–1509. Argued January 8, 2008—Decided March 3, 2008

One element of tax evasion under 26 U. S. C. § 7201 is "the existence of a tax deficiency." *Sansone* v. *United States*, 380 U. S. 343, 351. Petitioner Boulware was charged with criminal tax evasion and filing a false income tax return for diverting funds from a closely held corporation, HIE, of which he was the president, founder, and controlling shareholder. To support his argument that the Government could not establish the tax deficiency required to convict him, Boulware sought to introduce evidence that HIE had no earnings and profits in the relevant taxable years, so he in effect received distributions of property that were returns of capital, up to his basis in his stock, which are not taxable, see 26 U. S. C. §§ 301 and 316(a). Under § 301(a), unless the Internal Revenue Code requires otherwise, a "distribution of property" "made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in [§ 301(c)]." Section 301(c) provides that the portion of the distribution that is a "dividend," as defined by § 316(a), must be included in the recipient's gross income; and the portion that is not a dividend is, depending on the shareholder's basis for his stock, either a nontaxable return of capital or a taxable capital gain. Section 316(a) defines "dividend" as a "distribution" out of "earnings and profits." The District Court granted the Government's *in limine* motion to bar evidence supporting Boulware's return-of-capital theory, relying on the Ninth Circuit's *Miller* decision that a diversion of funds in a criminal tax evasion case may be deemed a return of capital only if the taxpayer or corporation demonstrates that the distributions were intended to be such a return. The court later found Boulware's proffer of evidence insufficient under *Miller* and declined to instruct the jury on his theory. In affirming his conviction, the Ninth Circuit held that Boulware's proffer was properly rejected under *Miller* because he offered no proof that the amounts diverted were intended as a return of capital when they were made.

Held: A distributee accused of criminal tax evasion may claim return-of-capital treatment without producing evidence that, when the distribution occurred, either he or the corporation intended a return of capital. Pp. 429–439.

Syllabus

(a) Tax classifications like "dividend" and "return of capital" turn on a transaction's "objective economic realities," not "the particular form the parties employed." *Frank Lyon Co.* v. *United States*, 435 U. S. 561, 573. In economic reality, a shareholder's informal receipt of corporate property "may be as effective a means of distributing profits among stockholders as the formal declaration of a dividend," *Palmer* v. *Commissioner*, 302 U. S. 63, 69, or as effective a means of returning a shareholder's capital, see *ibid.* Economic substance remains the touchstone for characterizing funds that a shareholder diverts before they can be recorded on a corporation's books. Pp. 429–430.

(b) *Miller*'s view that a return-of-capital defense requires evidence of a corresponding contemporaneous intent sits uncomfortably not only with the tax law's economic realism, but also with the particular wording of §§301 and 316(a). As these sections are written, the tax consequences of a corporation's distribution made with respect to stock depend, not on anyone's purpose to return capital or get it back, but on facts wholly independent of intent: whether the corporation had earnings and profits, and the amount of the taxpayer's basis for his stock. The *Miller* court could claim no textual hook for its contemporaneous intent requirement, but argued that it avoided supposed anomalies. The court, however, mistakenly reasoned that applying §§301 and 316(a) in criminal cases unnecessarily emphasizes the deficiency's amount while ignoring the willfulness of the intent to evade taxes. Willfulness is an element of the crimes because the substantive provisions defining tax evasion and filing a false return expressly require it, see, *e. g.*, §7201. Nothing in §§301 and 316(a) relieves the Government of the burden of proving willfulness or impedes it from doing so if there is evidence of willfulness. The *Miller* court also erred in finding it troublesome that, without a contemporaneous intent requirement, a shareholder distributee would be immune from punishment if the corporation had no earnings and profits but convicted if the corporation did have earning and profits. An acquittal in the former instance would in fact result merely from the Government's failure to prove an element of the crime. The fact that a shareholder of a successful corporation may have different tax liability from a shareholder of a corporation without earnings and profits merely follows from the way §§301 and 316(a) are written and from §7201's tax deficiency requirement. Even if there were compelling reasons to extend §7201 to cases in which no taxes are owed, Congress, not the Judiciary, would have to do the rewriting. Pp. 430–434.

(c) *Miller* also suffers from its own anomalies. First, §§301 and 316 are odd stalks for grafting a contemporaneous intent requirement. Correct application of their rules will often become possible only at the end of the corporation's tax year, regardless of the shareholder or corpo-

Syllabus

ration's understanding months earlier when a particular distribution may have been made. Moreover, §301(a), which expressly provides that distributions made with respect to stock "shall be treated in the manner provided in [§301(c)]," ostensibly provides for all variations of tax treatment of such distributions unless a separate Code provision requires otherwise. Yet *Miller* effectively converts the section into one of merely partial coverage, leaving the tax status of one class of distributions in limbo in criminal cases. Allowing §61(a) of the Code, which defines gross income, "[e]xcept as otherwise provided," as "all income from whatever source derived," to step in where §301(a) has been pushed aside would sanction yet another eccentricity: §301(a) would not cover what it says it "shall" (distributions with respect to stock for which no more specific provision is made), while §61(a) would have to apply to what by its terms it should not (a receipt of funds for which tax treatment is "otherwise provided" in §301(a)). *Miller* erred in requiring contemporaneous intent, and the Ninth Circuit's judgment here, relying on *Miller*, is likewise erroneous. Pp. 434–436.

(d) This Court declines to address the Government's argument that the judgment should be affirmed on the ground that before any distribution may be treated as a return of capital, it must first be distributed to the shareholder "with respect to . . . stock." The facts in this case have not been raked over with that condition in mind, and any canvas of evidence and Boulware's proffer should be made by a court familiar with the entire evidentiary record. Nor will the Court take up in the first instance the question whether an unlawful diversion may ever be deemed a "distribution . . . with respect to [a corporation's] stock." Pp. 436–439.

470 F. 3d 931, vacated and remanded.

SOUTER, J., delivered the opinion for a unanimous Court.

John D. Cline argued the cause for petitioner. With him on the briefs was *C. Kevin Marshall*.

Deanne E. Maynard argued the cause for the United States. With her on the brief were *Solicitor General Clement*, *Acting Assistant Attorney General Morrison*, *Deputy Solicitor General Dreeben*, *Alan Hechtkopf*, *Karen Quesnel*, and *S. Robert Lyons*.*

**John L. Pollok* and *Joshua L. Dratel* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae*.

JUSTICE SOUTER delivered the opinion of the Court.

Sections 301 and 316(a) of the Internal Revenue Code set the conditions for treating certain corporate distributions as returns of capital, nontaxable to the recipient. 26 U. S. C. §§ 301, 316(a) (2000 ed. and Supp. V). The question here is whether a distributee accused of criminal tax evasion may claim return-of-capital treatment without producing evidence that either he or the corporation intended a capital return when the distribution occurred. We hold that no such showing is required.

I

"[T]he capstone of [the] system of sanctions . . . calculated to induce . . . fulfillment of every duty under the income tax law," *Spies* v. *United States*, 317 U. S. 492, 497 (1943), is 26 U. S. C. § 7201, making it a felony willfully to "attemp[t] in any manner to evade or defeat any tax imposed by" the Code.[1] One element of tax evasion under § 7201 is "the existence of a tax deficiency," *Sansone* v. *United States*, 380 U. S. 343, 351 (1965); see also *Lawn* v. *United States*, 355 U. S. 339, 361 (1958),[2] which the Government must prove beyond a reasonable doubt, see *ibid.* ("[O]f course, a conviction upon a charge of attempting to evade assessment of income taxes by the filing of a fraudulent return cannot stand in the absence of proof of a deficiency").

Any deficiency determination in this case will turn on §§ 301 and 316(a) of the Code. According to § 301(a), unless another provision of the Code requires otherwise, a "distri-

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[1] A related provision, 26 U. S. C. § 7206(1), criminalizes the willful filing of a tax return believed to be materially false. See n. 9, *infra*.

[2] "[T]he elements of § 7201 are willfulness[,] the existence of a tax deficiency, . . . and an affirmative act constituting an evasion or attempted evasion of the tax." *Sansone* v. *United States*, 380 U. S. 343, 351 (1965). The Courts of Appeals have divided over whether the Government must prove the tax deficiency is "substantial," see *United States* v. *Daniels*, 387 F. 3d 636, 640–641, and n. 2 (CA7 2004) (collecting cases); we do not address that issue here.

bution of property" that is "made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in [§301(c)]." Under §301(c), the portion of the distribution that is a "dividend," as defined by §316(a), must be included in the recipient's gross income; and the portion that is not a dividend is, depending on the shareholder's basis for his stock, either a nontaxable return of capital or a gain on the sale or exchange of stock, ordinarily taxable to the shareholder as a capital gain. Finally, §316(a) defines "dividend" as

> "any distribution of property made by a corporation to its shareholders—
>
> "(1) out of its earnings and profits accumulated after February 28, 1913, or
>
> "(2) out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made."

Sections 301 and 316(a) together thus make the existence of "earnings and profits"[3] the decisive fact in determining the tax consequences of distributions from a corporation to a shareholder with respect to his stock. This requirement of "relating the tax status of corporate distributions to earnings and profits is responsive to a felt need for protecting returns of capital from tax." 4 Bittker & Lokken ¶92.1.1, at 92–3.

II

In this criminal tax proceeding, petitioner Michael Boulware was charged with several counts of tax evasion and

[3] Although the Code does not "comprehensively define 'earnings and profits,'" 4 B. Bittker & L. Lokken, Federal Taxation of Income, Estates and Gifts ¶92.1.3, p. 92–6 (3d ed. 2003) (hereinafter Bittker & Lokken), the "[p]rovisions of the Code and regulations relating to earnings and profits ordinarily take taxable income as the point of departure," *id.*, at 92–9.

filing a false income tax return, stemming from his diversion of funds from Hawaiian Isles Enterprises (HIE), a closely held corporation of which he was the president, founder, and controlling (though not sole) shareholder. At trial,[4] the United States sought to establish that Boulware had received taxable income by "systematically divert[ing] funds from HIE in order to support a lavish lifestyle." 384 F. 3d 794, 799 (CA9 2004). The Government's evidence showed that

> "[Boulware] gave millions of dollars of HIE money to his girlfriend . . . and millions of dollars to his wife . . . without reporting any of this money on his personal income tax returns. . . . [H]e siphoned off this money primarily by writing checks to employees and friends and having them return the cash to him, by diverting payments by HIE customers, by submitting fraudulent invoices to HIE, and by laundering HIE money through companies in the Kingdom of Tonga and Hong Kong." *Ibid.*

In defense, Boulware sought to introduce evidence that HIE had no retained or current earnings and profits in the relevant taxable years, with the consequence (he argued) that he in effect received distributions of property that must have been returns of capital, up to his basis in his stock. See §301(c)(2). Because the return of capital was nontaxable, the argument went, the Government could not establish the tax deficiency required to convict him.

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[4] The trial at issue in this case was actually Boulware's second trial on §§7201 and 7206(1) charges, his convictions on those counts in an earlier trial having been vacated by the Ninth Circuit for reasons not at issue here, see 384 F. 3d 794 (2004). In that earlier trial, Boulware was also convicted of conspiracy to make false statements to a federally insured financial institution, in violation of 18 U. S. C. §371. The Ninth Circuit affirmed Boulware's conspiracy conviction that first time around, however, so the present trial did not include a conspiracy charge.

The Government moved *in limine* to bar evidence in support of Boulware's return-of-capital theory, on the grounds of "irrelevan[ce] in [this] criminal tax case," App. 20. The Government relied on the Ninth Circuit's decision in *United States* v. *Miller*, 545 F. 2d 1204 (1976), in which that court held that in a criminal tax evasion case, a diversion of funds may be deemed a return of capital only after "some demonstration on the part of the taxpayer and/or the corporation that such [a distribution was] intended to be such a return," *id.*, at 1215. Boulware, the Government argued, had offered to make no such demonstration. App. 21.

The District Court granted the Government's motion, and when Boulware sought "to present evidence of [HIE's] alleged over-reporting of income, and an offer of proof relating to the issue of . . . dividends," *id.*, at 135, the District Court denied his request. The court said that "[n]ot only would much of [his proffered] evidence be excludable as expert legal opinion, it is plainly insufficient under the Miller case," *id.*, at 138, and accordingly declined to instruct the jury on Boulware's return-of-capital theory. The jury rejected his alternative defenses (that the diverted funds were nontaxable corporate advances or loans, or that he used the moneys for corporate purposes), and found him guilty on nine counts, four of tax evasion and five of filing a false return.

The Ninth Circuit affirmed. 470 F. 3d 931 (2006). It acknowledged that "imposing an intent requirement creates a disconnect between civil and criminal liability," but thought that under *Miller*, "the characterization of diverted corporate funds for civil tax purposes does not dictate their characterization for purposes of a criminal tax evasion charge." 470 F. 3d, at 934. The court held the test in a criminal case to be "whether the defendant has willfully attempted to evade the payment or assessment of a tax." *Ibid.* Because Boulware "'presented no concrete proof that the amounts were considered, intended, or recorded on the corporate rec-

ords as a return of capital at the time they were made,'" *id.*, at 935 (quoting *Miller*, *supra*, at 1215), the Ninth Circuit held that Boulware's proffer was "properly rejected . . . as inadequate," 470 F. 3d, at 935.

Judge Thomas concurred because the panel was bound by *Miller*, but noted that "*Miller*—and now the majority opinion—hold that a defendant may be criminally sanctioned for tax evasion without owing a penny in taxes to the government." 470 F. 3d, at 938. That, he said, not only "indicate[s] a logical fallacy, but is in flat contradiction with the tax evasion statute's requirement . . . of a tax deficiency." *Ibid.* (internal quotation marks omitted).[5]

We granted certiorari, 551 U. S. 1191 (2007), to resolve a split among the Courts of Appeals over the application of §§301 and 316(a) to informally transferred or diverted corporate funds in criminal tax proceedings.[6] We now vacate and remand.

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[5] Judge Thomas went on to say that the Government would prevail even without *Miller*'s rule because, in his view, Boulware's diversions were "unlawful," and the return-of-capital rules would not apply to diversions made for unlawful purposes. See 470 F. 3d, at 938–939.

[6] As noted, the Ninth Circuit holds that §§301 and 316(a) are not to be consulted in a criminal tax evasion case until the defendant produces evidence of an intent to treat diverted funds as a return of capital at the time it was made. See 470 F. 3d 931 (2006) (case below). By contrast, the Second Circuit allows a criminal defendant to invoke §§301 and 316(a) without evidence of a contemporaneous intent to treat such moneys as returns of capital. See *United States* v. *Bok*, 156 F. 3d 157, 162 (1998) ("[I]n return of capital cases, a taxpayer's intent is not determinative in defining the taxpayer's conduct"). Meanwhile, the Third, Sixth, and Eleventh Circuits arguably have taken the position that §§301 and 316(a) are altogether inapplicable in criminal tax cases involving informal distributions. See *United States* v. *Williams*, 875 F. 2d 846, 850–852 (CA11 1989); *United States* v. *Goldberg*, 330 F. 2d 30, 38 (CA3 1964); *Davis* v. *United States*, 226 F. 2d 331, 334–335 (CA6 1955); but see Brief for Petitioner 16 ("[T]hese cases can be read to address the allocation of the burden of proof on the return of capital issue, rather than the applicable substantive principles").

III

A

The colorful behavior described in the allegations requires a reminder that tax classifications like "dividend" and "return of capital" turn on "the objective economic realities of a transaction rather than . . . the particular form the parties employed," *Frank Lyon Co.* v. *United States*, 435 U. S. 561, 573 (1978); a "given result at the end of a straight path is not made a different result . . . by following a devious path," *Minnesota Tea Co.* v. *Helvering*, 302 U. S. 609, 613 (1938).[7] As for distributions with respect to stock, in economic reality a shareholder's informal receipt of corporate property "may be as effective a means of distributing profits among stockholders as the formal declaration of a dividend," *Palmer* v. *Commissioner*, 302 U. S. 63, 69 (1937), or as effective a means of returning a shareholder's capital, see *ibid.* Accordingly, "[a] distribution to a shareholder in his capacity as such . . .

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[7] We have also recognized that "[t]he legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted." *Gregory* v. *Helvering*, 293 U. S. 465, 469 (1935). The rule is a two-way street: "while a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not, . . . and may not enjoy the benefit of some other route he might have chosen to follow but did not," *Commissioner* v. *National Alfalfa Dehydrating & Milling Co.*, 417 U. S. 134, 149 (1974); see also *id.*, at 148 (referring to "the established tax principle that a transaction is to be given its tax effect in accord with what actually occurred and not in accord with what might have occurred"); *Founders Gen. Corp.* v. *Hoey*, 300 U. S. 268, 275 (1937) ("To make the taxability of the transaction depend upon the determination whether there existed an alternative form which the statute did not tax would create burden and uncertainty"). The question here, of course, is not whether alternative routes may have offered better or worse tax consequences, see generally Isenbergh, Review: Musings on Form and Substance in Taxation, 49 U. Chi. L. Rev. 859 (1982); rather, it is "whether what was done . . . was the thing which the statute[, here §§301 and 316(a),] intended," *Gregory*, *supra*, at 469.

is subject to §301 even though it is not declared in formal fashion." B. Bittker & J. Eustice, Federal Income Taxation of Corporations and Shareholders ¶8.05[1], pp. 8–36 to 8–37 (6th ed. 1999) (hereinafter Bittker & Eustice); see also Gardner, The Tax Consequences of Shareholder Diversions in Close Corporations, 21 Tax L. Rev. 223, 239 (1966) (hereinafter Gardner) ("Sections 316 and 301 do not require any formal path to be taken by a corporation in order for those provisions to apply").

There is no reason to doubt that economic substance remains the right touchstone for characterizing funds received when a shareholder diverts them before they can be recorded on the corporation's books. While they "never even pass through the corporation's hands," Bittker & Eustice ¶8.05[9], at 8–51, even diverted funds may be seen as dividends or capital distributions for purposes of §§301 and 316(a), see *Truesdell* v. *Commissioner*, 89 T. C. 1280 (1987) (treating diverted funds as "constructive" distributions in civil tax proceedings). The point, again, is that "taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed—the actual benefit for which the tax is paid." *Corliss* v. *Bowers*, 281 U. S. 376, 378 (1930); see also *Griffiths* v. *Commissioner*, 308 U. S. 355, 358 (1939).[8]

B

Miller's view that a criminal defendant may not treat a distribution as a return of capital without evidence of a cor-

[8]Thus in the period between this Court's decisions in *Commissioner* v. *Wilcox*, 327 U. S. 404 (1946) (holding embezzled funds to be nontaxable to the embezzler), and *James* v. *United States*, 366 U. S. 213 (1961) (overruling *Wilcox*, holding embezzled funds to be taxable income), the Government routinely argued that diverted funds were "constructive distributions," taxable to the recipient as dividends. See generally Gardner 237 ("While *Wilcox* was good law, the safest way to insure that both the corporation and the shareholder would be taxed on their respective gain from the diverted funds was to label them dividends"); 4 Bittker & Lokken ¶92.2(7), at 92–23, n. 37.

responding contemporaneous intent sits uncomfortably not only with the tax law's economic realism, but with the particular wording of §§301 and 316(a), as well. As those sections are written, the tax consequences of a "distribution by a corporation with respect to its stock" depend, not on anyone's purpose to return capital or to get it back, but on facts wholly independent of intent: whether the corporation had earnings and profits, and the amount of the taxpayer's basis for his stock. Cf. *Truesdell* v. *Commissioner*, Internal Revenue Service (IRS) Action on Decision 1988–25, 1988 WL 570761 (Sept. 12, 1988) (recommendation regarding acquiescence), IRS Non Docketed Service Advice Review, 1989 WL 1172952 (Mar. 15, 1989) (reply to request for reconsideration) ("[I]ntent is irrelevant. . . . [E]very distribution made with respect to a shareholder's stock is taxable as ordinary income, capital gain, or not at all pursuant to section 301(c) dependent upon the corporation's earnings and profits and the shareholder's stock basis. The determination is computational and not dependent upon intent").

When the *Miller* court went the other way, needless to say, it could claim no textual hook for the contemporaneous intent requirement, but argued for it as the way to avoid two supposed anomalies. First, the court thought that applying §§301 and 316(a) in criminal cases unnecessarily emphasizes the exact amount of deficiency while "completely ignor[ing] one essential element of the crime charged: the willful intent to evade taxes . . . ." 545 F. 2d, at 1214. But there is an analytical mistake here. Willfulness is an element of the crimes charged because the substantive provisions defining tax evasion and filing a false return expressly require it, see §7201 ("[a]ny person who willfully attempts . . . "); §7206(1) ("[w]illfully makes and subscribes . . . "). The element of willfulness is addressed at trial by requiring the Government to prove it. Nothing in §§301 and 316(a) as written (that is, without an intent requirement) relieves the Government of this burden of proving willfulness or impedes it from doing

so if evidence of willfulness is there. Those two sections as written simply address a different element of criminal evasion, the existence of a tax deficiency, and both deficiency and willfulness can be addressed straightforwardly (in jury instructions or bench findings) without tacking an intent requirement onto the rule distinguishing dividends from capital returns.

Second, the *Miller* court worried that if a defendant could claim capital treatment without showing a corresponding and contemporaneous intent,

> "[a] taxpayer who diverted funds from his close corporation when it was in the midst of a financial difficulty and had no earnings and profits would be immune from punishment (to the extent of his basis in the stock) for failure to report such sums as income; while that very same taxpayer would be convicted if the corporation had experienced a successful year and had earnings and profits." 545 F. 2d, at 1214.

"Such a result," said the court, "would constitute an extreme example of form over substance." *Ibid.* The Circuit thus assumed that a taxpayer like Boulware could be convicted of evasion with no showing of deficiency from an unreported dividend or capital gain.

But the acquittal that the author of *Miller* called form trumping substance would in fact result from the Government's failure to prove an element of the crime. There is no criminal tax evasion without a tax deficiency, see *supra*, at 424,[9] and there is no deficiency owing to a distribution (re-

[9] Boulware was also convicted of violating § 7206(1), which makes it a felony "[w]illfully [to] mak[e] and subscrib[e] any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which [the taxpayer] does not believe to be true and correct as to every material matter." He argues that if the Ninth Circuit erred, its error calls into question not only his § 7201 conviction, but his § 7206(1) conviction as well. Brief for Petitioner 15–16. Although the Courts of Appeals are unanimous in holding that § 7206(1) "does not require the prosecution to prove the existence of

ceived with respect to a corporation's stock) if a corporation has no earnings and profits and the value distributed does not exceed the taxpayer-shareholder's basis for his stock. Thus the fact that a shareholder distributee of a successful corporation may have different tax liability from a shareholder of a corporation without earnings and profits merely follows from the way §§ 301 and 316(a) are written (to distinguish dividend from capital return), and from the requirement of tax deficiency for a § 7201 crime. Without the deficiency there is nothing but some act expressing the will to evade, and, under § 7201, acting on "bad intentions, alone, [is] not punishable," *United States* v. *D'Agostino*, 145 F. 3d 69, 73 (CA2 1998).

It is neither here nor there whether the *Miller* court was justified in thinking it would improve things to convict more of the evasively inclined by dropping the deficiency requirement and finding some other device to exempt returns of capital.[10] Even if there were compelling reasons to extend

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a tax deficiency," *United States* v. *Tarwater*, 308 F. 3d 494, 504 (CA6 2002); see also *United States* v. *Peters*, 153 F. 3d 445, 461 (CA7 1998) (collecting cases), it is arguable that "the nature and character of the funds received can be critical in determining whether . . . § 7206(1) has been violated, [even if] proof of a tax deficiency is unnecessary," 1 I. Comisky, L. Feld, & S. Harris, Tax Fraud & Evasion ¶ 2.03[5], p. 21 (2007); see also Brief for Petitioner 15–16. The Government does not argue that Boulware's §§ 7201 and 7206(1) convictions should be treated differently at this stage of the proceedings, however, and we will accede to the Government's working assumption here that the §§ 7201 and 7206(1) convictions stand or fall together.

[10] "A better [method of exempting returns of capital from taxation] could no doubt be devised." 4 Bittker & Lokken ¶ 92.1.1, at 92–3; see *ibid.* (suggesting, for example, that "all receipts from a corporation could be treated as taxable income, and a correction for any resulting overtaxation could be made in computing gain or loss when stock is sold, exchanged, or becomes worthless"); see also Andrews, "Out of its Earnings and Profits": Some Reflections on the Taxation of Dividends, 69 Harv. L. Rev. 1403, 1439 (1956) (criticizing the earnings and profits concept "[a]s a device for separating income from return of capital," and suggesting that "[d]istributions which ought to be treated as return of capital [could] be brought within the concept of a partial liquidation by special provision").

§ 7201 to cases in which no taxes are owed, it bears repeating that "[t]he spirit of the doctrine which denies to the federal judiciary power to create crimes forthrightly admonishes that we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute," *Morissette* v. *United States*, 342 U. S. 246, 263 (1952) (opinion for the Court by Jackson, J.) (footnote omitted). If § 301, § 316(a), or § 7201 could stand amending, Congress will have to do the rewriting.

C

Not only is *Miller* devoid of the support claimed for it, but it suffers the demerit of some anomalies of its own. First and most obviously, §§ 301 and 316 are odd stalks for grafting a contemporaneous intent requirement, given the fact that the correct application of their rules will often become known only at the end of the corporation's tax year, regardless of the shareholder's or corporation's understanding months earlier when a particular distribution may have been made. Section 316(a)(2) conditions treating a distribution as a constructive dividend by reference to earnings and profits, and earnings and profits are to be "computed as of the close of the taxable year . . . without regard to the amount of the earnings and profits at the time the distribution was made." A corporation may make a deliberate distribution to a shareholder, with everyone expecting a profitable year and considering the distribution to be a dividend, only to have the shareholder end up liable for no tax if the company closes out its tax year in the red (so long as the shareholder's basis covers the distribution); when such facts are clear at the time the reporting forms and returns are filed,[11] the shareholder

[11] Sometimes these facts are not clear, and in certain circumstances a corporation may be required to assume it is profitable. For example, the instructions to IRS Form 1099–DIV provide that when a corporation is unsure whether it has sufficient earnings and profits at the end of the taxable year to cover a distribution to shareholders, "the entire payment

does not violate § 7201 by paying no tax on the moneys received, intent being beside the point. And since intent to make a distribution a taxable one cannot control, it would be odd to condition nontaxable return-of-capital treatment on contemporaneous intent, when the statute says nothing about intent at all.

The intent interpretation is strange for another reason, too (a reason in some tension with the Ninth Circuit's assumption that an unreported distribution without contemporaneous intent to return capital will support a conviction for evasion). The text of § 301(a) ostensibly provides for all variations of tax treatment of distributions received with respect to a corporation's stock unless a separate provision of the Code requires otherwise. Yet *Miller* effectively converts the section into one of merely partial coverage, with the result of leaving one class of distributions in a tax status limbo in criminal cases. That is, while § 301(a) expressly provides that distributions made by a corporation to a shareholder with respect to its stock "shall be treated in the manner provided in [§ 301(c)]," under *Miller*, a distribution from a corporation without earnings and profits would fail to be a return of capital for lack of contemporaneous intent to treat it that way; but to the extent that distribution did not exceed the taxpayer's basis for the stock (and thus become a capital gain), § 301(a) would leave the distribution unaccounted for.

It is no answer to say that § 61(a) of the Code would step in where § 301(a) has been pushed out. Although § 61(a) defines gross income, "[e]xcept as otherwise provided," as "all income from whatever source derived," the plain text of § 301(a) does provide otherwise for distributions made with respect to stock. So using § 61(a) as a stopgap would only sanction yet another eccentricity: § 301(a) would be held not to cover what its text says it "shall" (the class of distribu-

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must be reported as a dividend." See http://www.irs.gov/pub/irs-pdf/i1099div.pdf (as visited Feb. 15, 2008, and available in Clerk of Court's case file).

tions made with respect to stock for which no other more specific provision is made), while §61(a) would need to be applied to what by its terms it should not be (a receipt of funds for which tax treatment is "otherwise provided" in §301(a)).

The implausibility of a statutory reading that either creates a tax limbo or forces resort to an atextual stopgap is all the clearer from the Ninth Circuit's discussion in this case of its own understanding of the consequences of *Miller*'s rule: the court openly acknowledged that "imposing an intent requirement creates a disconnect between civil and criminal liability," 470 F. 3d, at 934. In construing distribution rules that draw no distinction in terms of criminal or civil consequences, the disparity of treatment assumed by the Court of Appeals counts heavily against its contemporaneous intent construction (quite apart from the Circuit's understanding that its interpretation entails criminal liability for evasion without any showing of a tax deficiency).

Miller erred in requiring a contemporaneous intent to treat the receipt of corporate funds as a return of capital, and the judgment of the Court of Appeals here, relying on *Miller*, is likewise erroneous.

IV

The Government has raised nothing that calls for affirmance in the face of the Court of Appeals's reliance on *Miller*. The United States does not defend differential treatment of criminal and civil cases, see Brief for United States 24, and it thus stops short of fully defending the Ninth Circuit's treatment. The Government's argument, instead, is that we should affirm under the rule that before any distribution may be treated as a return of capital (or, by a parity of reasoning, a dividend), it must first be distributed to the shareholder "with respect to . . . stock." *Id.*, at 19 (internal quotation marks omitted). The taxpayer's intent, the Government says, may be relevant to this limiting condition, and Boul-

ware never expressly claimed any such intent. See *ibid.* ("[I]ntent is . . . relevant to whether a payment is a 'distribution . . . with respect to [a corporation's] stock' "); but see Tr. of Oral Arg. 44 ("[J]ust to be clear, the Government is arguing for an objective test here").

The Government is of course correct that "with respect to . . . stock" is a limiting condition in §301(a). See *supra*, at 424–425.[12] As the Government variously says, it requires that "the distribution of property by the corporation be made to a shareholder because of his ownership of its stock," Brief for United States 16; and that " 'an amount paid by a corporation to a shareholder [be] paid to the shareholder in his capacity as such,' " *ibid.* (quoting 26 CFR §1.301–1(c) (2007); emphasis deleted).

This, however, is not the time or place to home in on the "with respect to . . . stock" condition. Facts with a bearing on it may range from the distribution of stock ownership[13]

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[12] Another limiting condition is that the diversion of funds must be a "distribution" in the first place (regardless of the "with respect to stock" limitation), see *supra*, at 429–430, though the Government is content to assume that §301(a)'s "distribution" language is capacious enough to cover the diversions involved here, and that if Boulware bears the burden of production in going forward with the defense that the funds he received constituted a "distribution" within the meaning of §301(a), see n. 14, *infra*, that burden has been met. Nor does the Government dispute that Boulware offered sufficient evidence of his basis and HIE's lack of earnings and profits. See Brief for United States 34, n. 11.

[13] See, *e. g.*, *Truesdell* v. *Commissioner*, IRS Non Docketed Service Advice Review, 1989 WL 1172952 (Mar. 15, 1989) ("We believe a corporation and its shareholders have a common objective—to earn a profit for the corporation to pass onto its shareholders. Especially where the corporation is wholly owned by one shareholder, the corporation becomes the alter ego of the shareholder in his profit making capacity. . . . [B]y passing corporate funds to himself as shareholder, a sole shareholder is acting in pursuit of these common objectives"). We note, however, that although Boulware was not a sole shareholder, the Tax Court has taken it as "well settled that a distribution of corporate earnings to shareholders may constitute a dividend," and so a return of capital as well, "notwithstanding that it is not in proportion to stockholdings." *Dellinger* v. *Commissioner*,

to conditions of corporate employment (whether, for example, a shareholder's efforts on behalf of a corporation amount to a good reason to treat a payment of property as salary). The facts in this case have yet to be raked over with the stock ownership condition in mind, since *Miller* seems to have pretermitted a full consideration of the defensive proffer, and if consideration is to be given to that condition now, the canvas of evidence and Boulware's proffer should be made by a court familiar with the whole evidentiary record.[11]

As a more specific version of its "with respect to . . . stock" position, the Government says that the diversions of corporate funds to Boulware were in fact unlawful, see Brief for United States 34–37; see also n. 5, *supra*, and it argues that §§301 and 316(a) are inapplicable to illegal transfers, see Brief for United States 34–37; see also *D'Agostino*, 145 F. 3d, at 73 ("[T]he 'no earnings and profits, no income' rule would not necessarily apply in a case of *unlawful* diversion, such

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32 T. C. 1178, 1183 (1959); see *ibid.* (noting that because other stockholders did not complain when a taxpayer received unequal property, "under the circumstances they must be deemed to have ratified the distribution"); see also *Crowley* v. *Commissioner*, 962 F. 2d 1077 (CA1 1992); *Lengsfield* v. *Commissioner*, 241 F. 2d 508 (CA5 1957); *Baird* v. *Commissioner*, 25 T. C. 387 (1955); *Thielking* v. *Commissioner*, 53 TCM 746 (1987), ¶87,227 P–H Memo TC.

[11] Boulware does not dispute that he bears the burden of producing some evidence to support his return-of-capital theory, including evidence that the corporation lacked earnings and profits and that he had sufficient basis in his stock to cover the distribution. See Tr. of Oral Arg. 53. He instead argues that, as to the "with respect to . . . stock" requirement, it suffices to show "[t]hat he is a stockholder, and that he did not receive this money in any nonstockholder capacity." *Id.*, at 57. The Government, for its part, on the authority of *Holland* v. *United States*, 348 U. S. 121 (1954), and *Bok*, 156 F. 3d, at 163–164, argues that Boulware must offer more evidence than that. We express no view on that issue here, just as we decline to consider the more general question whether the Second Circuit's rule in *Bok*, which places on the criminal defendant the burden to produce evidence in support of a return-of-capital theory, is authorized by *Holland* and consistent with *Sandstrom* v. *Montana*, 442 U. S. 510 (1979), and related cases.

as embezzlement, theft, a violation of corporate law, or an attempt to defraud third party creditors" (emphasis in original)); see also n. 8, *supra*. The Government goes so far as to claim that "[t]he only rational basis for the jury's judgment was a conclusion that [Boulware] unlawfully diverted the funds." Brief for United States 37.

But we decline to take up the question whether an unlawful diversion may ever be deemed a "distribution . . . with respect to [a corporation's] stock," a question which was not considered by the Ninth Circuit. We do, however, reject the Government's current characterization of the jury verdict in Boulware's case. True, the jurors were not moved by Boulware's suggestion that the diversions were corporate advances or loans, or that he was using the funds for corporate purposes. But the jury was not asked, and cannot be said to have answered, whether Boulware breached any fiduciary duty as a controlling shareholder, unlawfully diverted corporate funds to defraud his wife, or embezzled HIE's funds outright.

V

Sections 301 and 316(a) govern the tax consequences of constructive distributions made by a corporation to a shareholder with respect to its stock. A defendant in a criminal tax case does not need to show a contemporaneous intent to treat diversions as returns of capital before relying on those sections to demonstrate no taxes are owed. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

WARNER-LAMBERT CO., LLC, ET AL. *v.* KENT ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 06–1498. Argued February 25, 2008—Decided March 3, 2008

467 F. 3d 85, affirmed by an equally divided Court.

Carter G. Phillips argued the cause for petitioners. With him on the briefs were *Daniel E. Troy*, *Rebecca K. Wood*, *Eamon P. Joyce*, *Quin M. Sorenson*, *David Klingsberg*, and *Steven Glickstein*.

Daryl Joseffer argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement*, *Acting Assistant Attorney General Bucholtz*, *Deputy Solicitor General Kneedler*, *Douglas N. Letter*, *Daniel Meron*, *Gerald F. Masoudi*, and *Eric M. Blumberg*.

Allison M. Zieve argued the cause for respondents. With her on the brief were *David R. Parker*, *Brian Wolfman*, *Scott L. Nelson*, *Theodore Goldberg*, and *David Bennet Rodes*.*

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America by *Kenneth S. Geller*, *David M. Gossett*, *Robin S. Conrad*, and *Amar D. Sarwal*; for the Generic Pharmaceutical Association by *Jay P. Lefkowitz*; for Pharmaceutical Research and Manufacturers of America by *Bert W. Rein*; and for the Product Liability Advisory Council by *Robert N. Weiner*.

Briefs of *amici curiae* urging affirmance were filed for the State of Kansas et al. by *Paul J. Morrison*, Attorney General of Kansas, *Stephen R. McAllister*, Solicitor General, and *Jared S. Maag*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Talis J. Colberg* of Alaska, *Terry Goddard* of Arizona, *Bill McCollum* of Florida, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Tom Miller* of Iowa, *Jack Conway* of Kentucky, *Michael A. Cox* of Michigan, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Catherine Cortez Masto* of Nevada, *Kelly A. Ayotte* of New Hampshire, *Anne Milgram* of New Jer-

PER CURIAM.

The judgment is affirmed by an equally divided Court.

THE CHIEF JUSTICE took no part in the consideration or decision of this case.

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sey, *Gary K. King* of New Mexico, *Andrew M. Cuomo* of New York, *Wayne Stenehjem* of North Dakota, *Marc Dann* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Henry McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Robert F. McDonnell* of Virginia, *Robert M. McKenna* of Washington, and *Darrell V. McGraw, Jr.*, of West Virginia; for AARP by *David C. Vladeck* and *Bruce Vignery;* for the American Association for Justice by *Francine A. Hochberg* and *Kathleen Flynn Peterson;* for the National Conference of State Legislatures et al. by *Richard Ruda* and *Steven H. Goldblatt;* and for Public Justice, P. C., by *Leslie A. Brueckner, David J. Arkush*, and *Arthur H. Bryant.*

Eric G. Lasker, Daniel J. Popeo, and *Richard A. Samp* filed a brief for the Washington Legal Foundation as *amicus curiae.*

Syllabus

WASHINGTON STATE GRANGE *v.* WASHINGTON STATE REPUBLICAN PARTY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06–713. Argued October 1, 2007—Decided March 18, 2008*

After the Ninth Circuit invalidated Washington's blanket primary system on the ground that it was nearly identical to the California system struck down in *California Democratic Party* v. *Jones*, 530 U. S. 567, state voters passed an initiative (I–872), providing that candidates must be identified on the primary ballot by their self-designated party preference; that voters may vote for any candidate; and that the two top votegetters for each office, regardless of party preference, advance to the general election. Respondent political parties claim that the new law, on its face, violates a party's associational rights by usurping its right to nominate its own candidates and by forcing it to associate with candidates it does not endorse. The District Court granted respondents summary judgment, enjoining I–872's implementation. The Ninth Circuit affirmed.

Held: I–872 is facially constitutional. Pp. 449–459.

(a) Facial challenges, which require a showing that a law is unconstitutional in all of its applications, are disfavored: They often rest on speculation; they run contrary to the fundamental principle of judicial restraint that courts should neither "'anticipate a question of constitutional law in advance of the necessity of deciding it'" nor "'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied,'" *Ashwander* v. *TVA*, 297 U. S. 288, 483; and they threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented consistent with the Constitution. Pp. 449–451.

(b) If I–872 severely burdens associational rights, it is subject to strict scrutiny and will be upheld only if it is "narrowly tailored to serve a compelling state interest," *Clingman* v. *Beaver*, 544 U. S. 581, 586. Contrary to petitioners' argument, this Court's presumption in *Jones*—that a nonpartisan blanket primary where the top two votegetters proceed to the general election regardless of party would be a less restric-

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*Together with No. 06–730, *Washington et al.* v. *Washington State Republican Party et al.*, also on certiorari to the same court.

Syllabus

tive alternative to California's system because it would not nominate candidates—is not dispositive here. There, the Court had no occasion to determine whether a primary system that indicates each candidate's party preference on the ballot, in effect, chooses the parties' nominees. Respondents' arguments that I–872 imposes a severe burden are flawed. They claim that the law is unconstitutional under *Jones* because it allows primary voters unaffiliated with a party to choose the party's nominee, thus violating the party's right to choose its own standard bearer. Unlike California's primary, however, the I–872 primary does not, by its terms, choose the parties' nominees. The choice of a party representative does not occur under I–872. The two top primary candidates proceed to the general election regardless of their party preferences. Whether the parties nominate their own candidate outside the state-run primary is irrelevant. Respondents counter that voters will assume that candidates on the general election ballot are their preferred nominees; and that even if voters do not make that assumption, they will at least assume that the parties associate with, and approve of, the nominees. However, those claims depend not on any facial requirement of I–872, but on the possibility that voters will be confused as to the meaning of the party-preference designation. This is sheer speculation. Even if voters could possibly misinterpret the designations, I–872 cannot be struck down in a facial challenge based on the mere possibility of voter confusion. The State could implement I–872 in a variety of ways, *e. g.*, through ballot design, that would eliminate any real threat of confusion. And without the specter of widespread voter confusion, respondents' forced association and compelled speech arguments fall flat. Pp. 451–458.

(c) Because I–872 does not severely burden respondents, the State need not assert a compelling interest. Its interest in providing voters with relevant information about the candidates on the ballot is easily sufficient to sustain the provision. P. 458.

460 F. 3d 1108, reversed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SOUTER, GINSBURG, BREYER, and ALITO, JJ., joined. ROBERTS, C. J., filed a concurring opinion, in which ALITO, J., joined, *post*, p. 459. SCALIA, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 462.

Robert M. McKenna, Attorney General of Washington, argued the cause for petitioners in both cases. With him on

the briefs in No. 06–730 were *Maureen Hart*, Solicitor General, and *James Kendrick Pharris*, *William Berggren Collins*, and *Jeffrey Todd Even*, Deputy Solicitors General. *Thomas Fitzgerald Ahearne* filed briefs for petitioner in No. 06–713.

John J. White, Jr., argued the cause for respondents in both cases. With him on the brief for Washington State Republican Party et al. was *Kevin B. Hansen*. *David T. McDonald*, *John P. Krill, Jr.*, and *Matthew J. Segal* filed a brief in both cases for respondent Washington State Democratic Central Committee. *Richard Shepard* filed a brief in both cases for respondent Libertarian Party of Washington.†

JUSTICE THOMAS delivered the opinion of the Court.

In 2004, voters in the State of Washington passed an initiative changing the State's primary election system. The People's Choice Initiative of 2004, or Initiative 872 (I–872), provides that candidates for office shall be identified on the ballot by their self-designated "party preference"; that voters may vote for any candidate; and that the top two votegetters for each office, regardless of party preference, advance to the general election. The Court of Appeals for the Ninth Circuit held I–872 facially invalid as imposing an unconstitutional burden on state political parties' First Amendment rights. Because I–872 does not on its face impose a severe burden on political parties' associational rights, and because respondents' arguments to the contrary rest on factual assumptions about voter confusion that can be evaluated only in the context of an as-applied challenge, we reverse.

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†Briefs of *amici curiae* urging affirmance in both cases were filed for the California Democratic Party by *Lance H. Olson*, *Deborah B. Caplan*, and *Richard C. Miadich;* and for the Democratic National Committee by *Joseph E. Sandler*.

Charles C. Foti, Jr., Attorney General of Louisiana, and *William P. Bryan III* filed a brief in both cases for the State of Louisiana as *amicus curiae*.

I

For most of the past century, Washington voters selected nominees for state and local offices using a blanket primary.[1] From 1935 until 2003, the State used a blanket primary that placed candidates from all parties on one ballot and allowed voters to select a candidate from any party. See 1935 Wash. Laws §§ 1–5, pp. 60–64. Under this system, the candidate who won a plurality of votes within each major party became that party's nominee in the general election. See 2003 Wash. Laws § 919, p. 775.

California used a nearly identical primary in its own elections until our decision in *California Democratic Party* v. *Jones*, 530 U. S. 567 (2000). In *Jones*, four political parties challenged California's blanket primary, arguing that it unconstitutionally burdened their associational rights by forcing them to associate with voters who did not share their beliefs. We agreed and struck down the blanket primary as inconsistent with the First Amendment. In so doing, we emphasized the importance of the nomination process as "'the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.'" *Id.*, at 575 (quoting *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 216 (1986)). We observed that a party's right to exclude is central to its freedom of association, and is never "more important than in the process of selecting its nominee." 530 U. S., at 575. California's blanket primary, we concluded, severely burdened the parties' freedom of association because it

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[1] The term "blanket primary" refers to a system in which "any person, regardless of party affiliation, may vote for a party's nominee." *California Democratic Party* v. *Jones*, 530 U. S. 567, 576, n. 6 (2000). A blanket primary is distinct from an "open primary," in which a person may vote for any party's nominees, but must choose among that party's nominees for all offices, *ibid.*, and the more traditional "closed primary," in which "only persons who are members of the political party . . . can vote on its nominee," *id.*, at 570.

forced them to allow nonmembers to participate in selecting the parties' nominees. That the parties retained the right to endorse their preferred candidates did not render the burden any less severe, as "[t]here is simply no substitute for a party's selecting its own candidates." *Id.*, at 581.

Because California's blanket primary severely burdened the parties' associational rights, we subjected it to strict scrutiny, carefully examining each of the state interests offered by California in support of its primary system. We rejected as illegitimate three of the asserted interests: "producing elected officials who better represent the electorate," "expanding candidate debate beyond the scope of partisan concerns," and ensuring "the right to an effective vote" by allowing nonmembers of a party to vote in the majority party's primary in "'safe'" districts. *Id.*, at 582–584. We concluded that the remaining interests—promoting fairness, affording voters greater choice, increasing voter participation, and protecting privacy—were not compelling on the facts of the case. Even if they were, the partisan California primary was not narrowly tailored to further those interests because a nonpartisan blanket primary, in which the top two vote-getters advance to the general election regardless of party affiliation, would accomplish each of those interests without burdening the parties' associational rights. *Id.*, at 585–586. The nonpartisan blanket primary had "all the characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters [were] not choosing a party's nominee." *Ibid.*

After our decision in *Jones*, the Court of Appeals for the Ninth Circuit struck down Washington's primary as "materially indistinguishable from the California scheme." *Democratic Party of Washington State* v. *Reed*, 343 F. 3d 1198, 1203 (2003). The Washington State Grange[2] promptly pro-

[2]The Washington State Grange is a fraternal, social, and civic organization chartered by the National Grange in 1889. Although originally formed to represent the interests of farmers, the organization has advo-

posed I–872 as a replacement.[3] It passed with nearly 60% of the vote and became effective in December 2004.

Under I–872, all elections for "partisan offices"[4] are conducted in two stages: a primary and a general election. To participate in the primary, a candidate must file a "declaration of candidacy" form, on which he declares his "major or minor party preference, or independent status." Wash. Rev. Code §29A.24.030 (Supp. 2005). Each candidate and his party preference (or independent status) is in turn designated on the primary election ballot. A political party cannot prevent a candidate who is unaffiliated with, or even repugnant to, the party from designating it as his party of preference. See App. 396–397, 595 (declaration of James K. Pharris, Exhibit C: Ruling Order, May 18, 2005, Wash. Admin. Code §434–215–015). In the primary election, voters may select "any candidate listed on the ballot, regardless of the party preference of the candidates or the voter." *Id.*, at 606, §434–262–012.

The candidates with the highest and second-highest vote totals advance to the general election, regardless of their

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cated a variety of goals, including women's suffrage, rural electrification, protection of water resources, and universal telephone service. The State Grange also supported the Washington constitutional amendment establishing initiatives and referendums and sponsored the 1934 blanket primary initiative.

[3] Respondents make much of the fact that the promoters of I–872 presented it to Washington voters as a way to preserve the primary system in place from 1935 to 2003. But our task is not to judge I–872 based on its promoters' assertions about its similarity, or lack thereof, to the unconstitutional primary; we must evaluate the constitutionality of I–872 on its own terms. Whether the language of I–872 was purposely drafted to survive a *Jones*-type constitutional challenge is irrelevant to whether it has successfully done so.

[4] "'Partisan office' means a public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name." Wash. Rev. Code §29A.04.110 (Supp. 2005).

party preferences. *Ibid.* Thus, the general election may pit two candidates with the same party preference against one another.[5] Each candidate's party preference is listed on the general election ballot, and may not be changed between the primary and general elections. See *id.*, at 601, § 434–230–040.

Immediately after the State enacted regulations to implement I–872, the Washington State Republican Party filed suit against a number of county auditors challenging the law on its face. The party contended that the new system violates its associational rights by usurping its right to nominate its own candidates and by forcing it to associate with candidates it does not endorse. The Washington State Democratic Central Committee and Libertarian Party of Washington State joined the suit as plaintiffs. The Washington State Grange joined as a defendant, and the State of Washington was substituted for the county auditors as defendant. The United States District Court for the Western District of Washington granted the political parties' motions for summary judgment and enjoined the implementation of I–872. See *Washington State Republican Party* v. *Logan*, 377 F. Supp. 2d 907, 932 (2005).

The Court of Appeals affirmed. 460 F. 3d 1108, 1125 (CA9 2006). It held that the I–872 primary severely burdens the political parties' associational rights because the party-preference designation on the ballot creates a risk that primary winners will be perceived as the parties' nominees and produces an "impression of associatio[n]" between a candidate and his party of preference even when the party does not associate, or wish to be associated, with the candidate. *Id.*, at 1119. The Court of Appeals noted a "constitutionally

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[5]This is not a hypothetical outcome. The Court of Appeals observed that, had the 1996 gubernatorial primary been conducted under the I–872 system, two Democratic candidates and no Republican candidate would have advanced from the primary to the general election. See 460 F. 3d 1108, 1114, n. 8 (CA9 2006).

significant distinction between ballots and other vehicles for political expression," reasoning that the risk of perceived association is particularly acute when ballots include party labels because such labels are typically used to designate candidates' views on issues of public concern. *Id.*, at 1121. And it determined that the State's interests underlying I–872 were not sufficiently compelling to justify the severe burden on the parties' association. Concluding that the provisions of I–872 providing for the party-preference designation on the ballot were not severable, the court struck down I–872 in its entirety.

We granted certiorari, 549 U. S. 1251 (2007), to determine whether I–872, on its face, violates the political parties' associational rights.

II

Respondents object to I–872 not in the context of an actual election, but in a facial challenge. Under *United States* v. *Salerno*, 481 U. S. 739 (1987), a plaintiff can only succeed in a facial challenge by "establish[ing] that no set of circumstances exists under which the Act would be valid," *i. e.*, that the law is unconstitutional in all of its applications. *Id.*, at 745. While some Members of the Court have criticized the *Salerno* formulation, all agree that a facial challenge must fail where the statute has a "'plainly legitimate sweep.'" *Washington* v. *Glucksberg*, 521 U. S. 702, 739–740, and n. 7 (1997) (STEVENS, J., concurring in judgments). Washington's primary system survives under either standard, as we explain below.[6] In determining whether a law is facially in-

[6]Our cases recognize a second type of facial challenge in the First Amendment context under which a law may be overturned as impermissibly overbroad because a "substantial number" of its applications are unconstitutional, "'judged in relation to the statute's plainly legitimate sweep.'" *New York* v. *Ferber*, 458 U. S. 747, 769–771 (1982) (quoting *Broadrick* v. *Oklahoma*, 413 U. S. 601, 615 (1973)). We generally do not apply the "'strong medicine'" of overbreadth analysis where the parties fail to describe the instances of arguable overbreadth of the contested

valid, we must be careful not to go beyond the statute's facial requirements and speculate about "hypothetical" or "imaginary" cases. See *United States* v. *Raines*, 362 U. S. 17, 22 (1960) ("The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases thus imagined"). The State has had no opportunity to implement I–872, and its courts have had no occasion to construe the law in the context of actual disputes arising from the electoral context, or to accord the law a limiting construction to avoid constitutional questions. Cf. *Yazoo & Mississippi Valley R. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217, 220 (1912) ("How the state court may apply [a statute] to other cases, whether its general words may be treated as more or less restrained, and how far parts of it may be sustained if others fail are matters upon which we need not speculate now"). Exercising judicial restraint in a facial challenge "frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes in areas where their constitutional application might be cloudy." *Raines*, *supra*, at 22.

Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of "premature interpretation of statutes on the basis of factually barebones records." *Sabri* v. *United States*, 541 U. S. 600, 609 (2004) (internal quotation marks and brackets omitted). Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither "'anticipate a question of constitutional law in advance of the necessity of deciding it'" nor "'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" *Ashwander* v. *TVA*, 297 U. S. 288, 346–347 (1936) (Brandeis, J., concurring) (quoting *Liverpool, New York & Philadelphia*

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law. See *New York State Club Assn., Inc.* v. *City of New York*, 487 U. S. 1, 14 (1988).

S. S. Co. v. *Commissioners of Emigration*, 113 U. S. 33, 39 (1885)). Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that "'[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.'" *Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 329 (2006) (quoting *Regan* v. *Time, Inc.*, 468 U. S. 641, 652 (1984) (plurality opinion)). It is with these principles in view that we turn to the merits of respondents' facial challenge to I–872.

A

The States possess a "'broad power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," Art. I, §4, cl. 1, which power is matched by state control over the election process for state offices.'" *Clingman* v. *Beaver*, 544 U. S. 581, 586 (2005) (quoting *Tashjian*, 479 U. S., at 217); *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 358 (1997) (same). This power is not absolute, but is "subject to the limitation that [it] may not be exercised in a way that violates . . . specific provisions of the Constitution." *Williams* v. *Rhodes*, 393 U. S. 23, 29 (1968). In particular, the State has the "'responsibility to observe the limits established by the First Amendment rights of the State's citizens,'" including the freedom of political association. *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 222 (1989) (quoting *Tashjian*, *supra*, at 217).

Election regulations that impose a severe burden on associational rights are subject to strict scrutiny, and we uphold them only if they are "narrowly tailored to serve a compelling state interest." *Clingman*, *supra*, at 586; see also *Rhodes*, *supra*, at 31 ("'[O]nly a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment

freedoms'" (quoting *NAACP* v. *Button*, 371 U. S. 415, 438 (1963))). If a statute imposes only modest burdens, however, then "the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions" on election procedures. *Anderson* v. *Celebrezze*, 460 U. S. 780, 788 (1983). "Accordingly, we have repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity at the polls." *Burdick* v. *Takushi*, 504 U. S. 428, 438 (1992).

The parties do not dispute these general principles; rather, they disagree about whether I–872 severely burdens respondents' associational rights. That disagreement begins with *Jones*. Petitioners argue that the I–872 primary is indistinguishable from the alternative *Jones* suggested would be constitutional. In *Jones* we noted that a nonpartisan blanket primary, where the top two votegetters proceed to the general election regardless of their party, was a less restrictive alternative to California's system because such a primary does not nominate candidates. 530 U. S., at 585–586 (The nonpartisan blanket primary "has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters are not choosing a party's nominee"). Petitioners are correct that we assumed that the nonpartisan primary we described in *Jones* would be constitutional. But that is not dispositive here because we had no occasion in *Jones* to determine whether a primary system that indicates each candidate's party preference on the ballot, in effect, chooses the parties' nominees.

That question is now squarely before us. Respondents argue that I–872 is unconstitutional under *Jones* because it has the same "constitutionally crucial" infirmity that doomed California's blanket primary: It allows primary voters who are unaffiliated with a party to choose the party's nominee. Respondents claim that candidates who progress to the general election under I–872 will become the *de facto* nominees

of the parties they prefer, thereby violating the parties' right to choose their own standard bearers, see *Timmons*, *supra*, at 359, and altering their messages. They rely on our statement in *Jones* reaffirming "the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party 'select[s] a standard bearer who best represents the party's ideologies and preferences.'" *Jones*, 530 U. S., at 575 (quoting *Eu*, *supra*, at 224).

The flaw in this argument is that, unlike the California primary, the I–872 primary does not, by its terms, choose parties' nominees. The essence of nomination—the choice of a party representative—does not occur under I–872. The law never refers to the candidates as nominees of any party, nor does it treat them as such. To the contrary, the election regulations specifically provide that the primary "does not serve to determine the nominees of a political party but serves to winnow the number of candidates to a final list of two for the general election." App. 606, Wash. Admin. Code §434–262–012. The top two candidates from the primary election proceed to the general election regardless of their party preferences. Whether parties nominate their own candidates outside the state-run primary is simply irrelevant. In fact, parties may now nominate candidates by whatever mechanism they choose because I–872 repealed Washington's prior regulations governing party nominations.[7]

[7] It is true that parties may no longer indicate their nominees on the ballot, but that is unexceptionable: The First Amendment does not give political parties a right to have their nominees designated as such on the ballot. See *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 362–363 (1997) ("We are unpersuaded, however, by the party's contention that it has a right to use the ballot itself to send a particularized message, to its candidate and to the voters, about the nature of its support for the candidate"). Parties do not gain such a right simply because the State affords candidates the opportunity to indicate their party preference on

Respondents counter that, even if the I–872 primary does not actually choose parties' nominees, it nevertheless burdens their associational rights because voters will assume that candidates on the general election ballot are the nominees of their preferred parties. This brings us to the heart of respondents' case—and to the fatal flaw in their argument. At bottom, respondents' objection to I–872 is that voters will be confused by candidates' party-preference designations. Respondents' arguments are largely variations on this theme. Thus, they argue that even if voters do not assume that candidates on the general election ballot are the nominees of their parties, they will at least assume that the parties associate with, and approve of, them. This, they say, compels them to associate with candidates they do not endorse, alters the messages they wish to convey, and forces them to engage in counterspeech to disassociate themselves from the candidates and their positions on the issues.

We reject each of these contentions for the same reason: They all depend, not on any facial requirement of I–872, but on the possibility that voters will be confused as to the meaning of the party-preference designation. But respondents' assertion that voters will misinterpret the party-preference designation is sheer speculation. It "depends upon the belief that voters can be 'misled' by party labels. But '[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues.'" *Tashjian*, 479 U. S., at 220 (quoting *Anderson*, *supra*, at 797). There is simply no basis to presume that a well-informed electorate will interpret a candidate's party-preference designation to mean that the candidate is the party's chosen nominee or representative or that the party associates with or approves of the candidate. See *New York State Clubs Assn., Inc.* v. *City of New York*, 487 U. S. 1, 13–14 (1988)

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the ballot. "Ballots serve primarily to elect candidates, not as forums for political expression." *Id.*, at 363.

(rejecting a facial challenge to a law regulating club membership and noting that "[w]e could hardly hold otherwise on the record before us, which contains no specific evidence on the characteristics of *any* club covered by the [l]aw"). This strikes us as especially true here, given that it was the voters of Washington themselves, rather than their elected representatives, who enacted I–872.

Of course, it is *possible* that voters will misinterpret the candidates' party-preference designations as reflecting endorsement by the parties. But these cases involve a facial challenge, and we cannot strike down I–872 on its face based on the mere possibility of voter confusion. See *Yazoo*, 226 U. S., at 219 ("[T]his court must deal with the case in hand and not with imaginary ones"); *Pullman Co.* v. *Knott*, 235 U. S. 23, 26 (1914) (A statute "is not to be upset upon hypothetical and unreal possibilities, if it would be good upon the facts as they are"). Because respondents brought their suit as a facial challenge, we have no evidentiary record against which to assess their assertions that voters will be confused. See *Timmons*, 520 U. S., at 375–376 (STEVENS, J., dissenting) (rejecting judgments based on "imaginative theoretical sources of voter confusion" and "entirely hypothetical" outcomes). Indeed, because I–872 has never been implemented, we do not even have ballots indicating how party preference will be displayed. It stands to reason that whether voters will be confused by the party-preference designations will depend in significant part on the form of the ballot. The Court of Appeals assumed that the ballot would not place abbreviations like "'D'" and "'R,'" or "'Dem.'" and "'Rep.'" after the names of candidates, but would instead "clearly state that a particular candidate 'prefers' a particular party." 460 F. 3d, at 1121, n. 20. It thought that even such a clear statement did too little to eliminate the risk of voter confusion.

But we see no reason to stop there. As long as we are speculating about the form of the ballot—and we can do no

more than speculate in this facial challenge—we must, in fairness to the voters of the State of Washington who enacted I–872 and in deference to the executive and judicial officials who are charged with implementing it, ask whether the ballot could conceivably be printed in such a way as to eliminate the possibility of widespread voter confusion and with it the perceived threat to the First Amendment. See *Ayotte*, 546 U. S., at 329 (noting that courts should not nullify more of a state law than necessary so as to avoid frustrating the intent of the people and their duly elected representatives); *Ward* v. *Rock Against Racism*, 491 U. S. 781, 795–796 (1989) ("'[I]n evaluating a facial challenge to a state law, a federal court must . . . consider any limiting construction that a state court or enforcement agency has proffered'" (quoting *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 455 U. S. 489, 494, n. 5 (1982))).

It is not difficult to conceive of such a ballot. For example, petitioners propose that the actual I–872 ballot could include prominent disclaimers explaining that party preference reflects only the self-designation of the candidate and not an official endorsement by the party. They also suggest that the ballots might note preference in the form of a candidate statement that emphasizes the candidate's personal determination rather than the party's acceptance of the candidate, such as "my party preference is the Republican Party." Additionally, the State could decide to educate the public about the new primary ballots through advertising or explanatory materials mailed to voters along with their ballots.[8] We are satisfied that there are a variety of ways in which the State could implement I–872 that would eliminate any real threat of voter confusion. And without the spec-

[8] Washington counties have broad authority to conduct elections entirely by mail ballot rather than at in-person polling places. See Wash. Rev. Code §29A.48.010. As a result, over 90% of Washington voters now vote by mail. See Tr. of Oral Arg. 11.

ter of widespread voter confusion, respondents' arguments about forced association[9] and compelled speech[10] fall flat.

Our conclusion that these implementations of I–872 would be consistent with the First Amendment is fatal to respondents' facial challenge. See *Schall* v. *Martin*, 467 U. S. 253, 264 (1984) (a facial challenge fails where "at least some" constitutional applications exist). Each of their arguments rests on factual assumptions about voter confusion, and each fails for the same reason: In the absence of evidence, we cannot assume that Washington's voters will be misled. See *Jones*, 530 U. S., at 600 (STEVENS, J., dissenting) ("[A]n empirically debatable assumption . . . is too thin a reed to support a credible First Amendment distinction" between permissible and impermissible burdens on association). That

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[9] Respondents rely on *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557 (1995) (holding that a State may not require a parade to include a group if the parade's organizer disagrees with the group's message), and *Boy Scouts of America* v. *Dale*, 530 U. S. 640 (2000) (holding that the Boy Scouts' freedom of expressive association was violated by a state law requiring the organization to admit a homosexual scoutmaster). In those cases, *actual* association threatened to distort the groups' intended messages. We are aware of no case in which the mere *impression* of association was held to place a severe burden on a group's First Amendment rights, but we need not decide that question here.

[10] Relying on *Pacific Gas & Elec. Co.* v. *Public Util. Comm'n of Cal.*, 475 U. S. 1 (1986) (holding that a state agency may not require a utility company to include a third-party newsletter in its billing envelope), respondents argue that the threat of voter confusion will force them to speak to clarify their positions. Because I–872 does not actually force the parties to speak, however, *Pacific Gas & Elec.* is inapposite. I–872 does not require the parties to reproduce another's speech against their will; nor does it co-opt the parties' own conduits for speech. Rather, it simply provides a place on the ballot for candidates to designate their party preferences. Facilitation of speech to which a political party may choose to respond does not amount to forcing the political party to speak. Cf. *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 64–65 (2006).

factual determination must await an as-applied challenge. On its face, I–872 does not impose any severe burden on respondents' associational rights.

B

Because we have concluded that I–872 does not severely burden respondents, the State need not assert a compelling interest. See *Clingman*, 544 U. S., at 593 ("When a state electoral provision places no heavy burden on associational rights, 'a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions'" (quoting *Timmons*, 520 U. S., at 358)). The State's asserted interest in providing voters with relevant information about the candidates on the ballot is easily sufficient to sustain I–872. See *Anderson*, 460 U. S., at 796 ("There can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will in a general election").[11]

III

Respondents ask this Court to invalidate a popularly enacted election process that has never been carried out. Immediately after implementing regulations were enacted, respondents obtained a permanent injunction against the enforcement of I–872. The First Amendment does not require this extraordinary and precipitous nullification of the will of the people. Because I–872 does not on its face provide for

[11] Respondent Libertarian Party of Washington argues that I–872 is unconstitutional because of its implications for ballot access, trademark protection of party names, and campaign finance. We do not consider the ballot access and trademark arguments as they were not addressed below and are not encompassed by the question on which we granted certiorari: "Does Washington's primary election system . . . violate the associational rights of political parties because candidates are permitted to identify their political party preference on the ballot?" Pet. for Cert. in No. 06–730, p. i. The campaign finance issue also was not addressed below and is more suitable for consideration on remand.

the nomination of candidates or compel political parties to associate with or endorse candidates, and because there is no basis in this facial challenge for presuming that candidates' party-preference designations will confuse voters, I–872 does not on its face severely burden respondents' associational rights. We accordingly hold that I–872 is facially constitutional. The judgment of the Court of Appeals is reversed.

It is so ordered.

CHIEF JUSTICE ROBERTS, with whom JUSTICE ALITO joins, concurring.

I share JUSTICE SCALIA's concern that permitting a candidate to identify his political party preference on an official election ballot—regardless of whether the candidate is endorsed by the party or is even a member—may effectively force parties to accept candidates they do not want, amounting to forced association in violation of the First Amendment.

I do think, however, that whether voters *perceive* the candidate and the party to be associated is relevant to the constitutional inquiry. Our other forced-association cases indicate as much. In *Boy Scouts of America* v. *Dale*, 530 U. S. 640, 653 (2000), we said that Dale's presence in the Boy Scouts would "force the organization to send a message . . . [to] the world" that the Scouts approved of homosexuality. In other words, accepting Dale would lead outsiders to believe the Scouts endorsed homosexual conduct. Largely for that reason, we held that the First Amendment entitled the Scouts to exclude Dale. *Id.*, at 659. Similarly, in *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557 (1995), we allowed the organizers of Boston's St. Patrick's Day Parade to exclude a pro-gay rights float because the float's presence in the parade might create the impression that the organizers agreed with the float sponsors' message. See *id.*, at 575–577.

Voter perceptions matter, and if voters do not actually believe the parties and the candidates are tied together, it is hard to see how the parties' associational rights are adversely implicated. See *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 65 (2006) (rejecting law schools' First Amendment objection to military recruiters on campus because no reasonable person would believe the "law schools agree[d] with any speech by recruiters"). After all, individuals frequently claim to favor this or that political party; these preferences, without more, do not create an unconstitutional forced association.

What makes these cases different, as JUSTICE SCALIA explains, is the place where the candidates express their party preferences: on the ballot. See *post*, at 465 (dissenting opinion) (noting "the special role that a state-printed ballot plays in elections"). And what makes the ballot "special" is precisely the effect it has on voter impressions. See *Cook* v. *Gralike*, 531 U. S. 510, 532 (2001) (Rehnquist, C. J., concurring in judgment) ("[T]he ballot . . . is the last thing the voter sees before he makes his choice"); *Anderson* v. *Martin*, 375 U. S. 399, 402 (1964) ("[D]irecting the citizen's attention to the single consideration of race . . . may decisively influence the citizen to cast his ballot along racial lines").

But because respondents brought this challenge before the State of Washington had printed ballots for use under the new primary regime, we have no idea what those ballots will look like. Petitioners themselves emphasize that the content of the ballots in the pertinent respect is yet to be determined. See Reply Brief for Washington State Grange 2–4, 7–13.

If the ballot is designed in such a manner that no reasonable voter would believe that the candidates listed there are nominees or members of, or otherwise associated with, the parties the candidates claimed to "prefer," the I–872 primary system would likely pass constitutional muster. I cannot say on the present record that it would be impossible for

the State to design such a ballot. Assuming the ballot is so designed, voters would not regard the listed candidates as "party" candidates, any more than someone saying "I like Campbell's soup" would be understood to be associated with Campbell's. Voters would understand that the candidate does not speak on the party's behalf or with the party's approval. On the other hand, if the ballot merely lists the candidates' preferred parties next to the candidates' names, or otherwise fails clearly to convey that the parties and the candidates are not necessarily associated, the I–872 system would not survive a First Amendment challenge.

JUSTICE SCALIA complains that "[i]t is hard to know how to respond" to such mistaken views, *post*, at 467 (dissenting opinion), but he soldiers on nonetheless. He would hold that a party is burdened by a candidate's statement of preference even if no reasonable voter believes from the ballot that the party and the candidate are associated. I take his point to be that a particular candidate's "endorsement" of a party might alter the party's message, and this violates the party's freedom of association. See *post*, at 468 (dissenting opinion).

But there is no general right to stop an individual from saying, "I prefer this party," even if the party would rather he not. Normally, the party protects its message in such a case through responsive speech of its own. What makes these cases different of course is that the State controls the content of the ballot, which we have never considered a public forum. See *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 363 (1997) (ballots are not "forums for political expression"). Neither the candidate nor the party dictates the message conveyed by the ballot. In such a case, it is important to know what the ballot actually says—both about the candidate and about the party's association with the candidate. It is possible that no reasonable voter in Washington State will regard the listed candidates as members of, or otherwise associated with, the political parties the candidates claim to prefer. Nothing in my analysis requires the

parties to produce studies regarding voter perceptions on this score, but I would wait to see what the ballot says before deciding whether it is unconstitutional.

Still, I agree with JUSTICE SCALIA that the history of the challenged law suggests the State is not particularly interested in devising ballots that meet these constitutional requirements. See *post*, at 468 (dissenting opinion). But this record simply does not allow us to say with certainty that the election system created by I–872 is unconstitutional. Accordingly, I agree with the Court that respondents' present challenge to the law must fail, and I join the Court's opinion.

JUSTICE SCALIA, with whom JUSTICE KENNEDY joins, dissenting.

The electorate's perception of a political party's beliefs is colored by its perception of those who support the party; and a party's defining act is the selection of a candidate and advocacy of that candidate's election by conferring upon him the party's endorsement. When the state-printed ballot for the general election causes a party to be associated with candidates who may not fully (if at all) represent its views, it undermines both these vital aspects of political association. The views of the self-identified party supporter color perception of the party's message, and that self-identification on the ballot, with no space for party repudiation or party identification of its own candidate, impairs the party's advocacy of its standard bearer. Because Washington has not demonstrated that this severe burden upon parties' associational rights is narrowly tailored to serve a compelling interest—indeed, because it seems to me Washington's only plausible interest is precisely to reduce the effectiveness of political parties—I would find the law unconstitutional.

I

I begin with the principles on which the Court and I agree. States may not use election regulations to undercut political

parties' freedoms of speech or association. See *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 833–834 (1995). Thus, when a State regulates political parties as a part of its election process, we consider "the 'character and magnitude'" of the burden imposed on the party's associational rights and "the extent to which the State's concerns make the burden necessary." *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 358 (1997). Regulations imposing severe burdens must be narrowly tailored to advance a compelling state interest. *Ibid.*

Among the First Amendment rights that political parties possess is the right to associate with the persons whom they choose and to refrain from associating with persons whom they reject. *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U. S. 107, 122 (1981). Also included is the freedom to choose and promote the "'standard bearer who best represents the party's ideologies and preferences.'" *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 224 (1989).

When an expressive organization is compelled to associate with a person whose views the group does not accept, the organization's message is undermined; the organization is understood to embrace, or at the very least tolerate, the views of the persons linked with them. We therefore held, for example, that a State severely burdened the right of expressive association when it required the Boy Scouts to accept an openly gay scoutmaster. The scoutmaster's presence "would, at the very least, force the organization to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior." *Boy Scouts of America* v. *Dale*, 530 U. S. 640, 653 (2000).

A political party's expressive mission is not simply, or even primarily, to persuade voters of the party's views. Parties seek principally to promote the election of candidates who will implement those views. See, *e. g.*, *Tashjian* v. *Republi-*

can Party of Conn., 479 U. S. 208, 216 (1986); *Storer* v. *Brown*, 415 U. S. 724, 745 (1974); M. Hershey & P. Beck, Party Politics in America 13 (10th ed. 2003). That is achieved in large part by marking candidates with the party's seal of approval. Parties devote substantial resources to making their names trusted symbols of certain approaches to governance. See, *e. g.*, App. 239 (declaration of Democratic Committee Chair Paul J. Berendt); J. Aldrich, Why Parties? 48–49 (1995). They then encourage voters to cast their votes for the candidates that carry the party name. Parties' efforts to support candidates by marking them with the party trademark, so to speak, have been successful enough to make the party name, in the words of one commentator, "the most important resource that the party possesses." Cain, Party Autonomy and Two-Party Electoral Competition, 149 U. Pa. L. Rev. 793, 804 (2001). And all evidence suggests party labels are indeed a central consideration for most voters. See, *e. g.*, *id.*, at 804, n. 34; Rahn, The Role of Partisan Stereotypes in Information Processing About Political Candidates, 37 Am. J. Pol. Sci. 472 (1993); Klein & Baum, Ballot Information and Voting Decisions in Judicial Elections, 54 Pol. Research Q. 709 (2001).

II

A

The State of Washington need not like, and need not favor, political parties. It is entirely free to decline running primaries for the selection of party nominees and to hold nonpartisan general elections in which party labels have no place on the ballot. See *California Democratic Party* v. *Jones*, 530 U. S. 567, 585–586 (2000). Parties would then be left to their own devices in both selecting and publicizing their candidates. But Washington has done more than merely decline to make its electoral machinery available for party building. Recognizing that parties draw support for their candidates by giving them the party *imprimatur*, Washing-

ton seeks to reduce the effectiveness of that endorsement by allowing *any* candidate to use the ballot for drawing upon the goodwill that a party has developed, while preventing the party from using the ballot to reject the claimed association or to identify the genuine candidate of its choice. This does not merely place the ballot off limits for party building; it makes the ballot an instrument by which party building is impeded, permitting unrebutted associations that the party itself does not approve.

These cases cannot be decided without taking account of the special role that a state-printed ballot plays in elections. The ballot comes into play "at the most crucial stage in the electoral process—the instant before the vote is cast." *Anderson* v. *Martin*, 375 U. S. 399, 402 (1964). It is the only document that all voters are guaranteed to see, and it is "the last thing the voter sees before he makes his choice," *Cook* v. *Gralike*, 531 U. S. 510, 532 (2001) (Rehnquist, C. J., concurring in judgment). Thus, we have held that a State cannot elevate a particular issue to prominence by making it the only issue for which the ballot sets forth the candidates' positions. *Id.*, at 525–526 (opinion of the Court). And we held unconstitutional California's election system, which listed as the party's candidate on the general-election ballot the candidate selected in a state-run "blanket primary" in which all citizens could determine who would be the party's nominee. *Jones*, 530 U. S., at 586. It was not enough to sustain the law that the party remained free to select its preferred candidate through another process, and could denounce or campaign against the candidate carrying the party's name on the general-election ballot. Forced association with the party on the general-election ballot was fatal. *Id.*, at 575–577.

The Court makes much of the fact that the party names shown on the Washington ballot may be billed as mere statements of candidate "preference." See *ante*, at 454–457. To be sure, the party is not *itself* forced to display favor for someone it does not wish to associate with, as the Boy Scouts

were arguably forced to do by employing the homosexual scoutmaster in *Dale*, and as the political parties were arguably forced to do by lending their ballot endorsement as party nominee in *Jones*. But thrusting an unwelcome, self-proclaimed association upon the party on the election ballot itself is amply destructive of the party's associational rights. An individual's endorsement of a party shapes the voter's view of what the party stands for, no less than the party's endorsement of an individual shapes the voter's view of what the individual stands for. That is why party nominees are often asked (and regularly agree) to repudiate the support of persons regarded as racial extremists. On Washington's ballot, such repudiation is impossible. And because the ballot is the only document voters are guaranteed to see, and the last thing they see before casting their vote, there is "no means of replying" that "would be equally effective with the voter." *Cook*, *supra*, at 532 (Rehnquist, C. J., concurring in judgment).

Not only is the party's message distorted, but its goodwill is hijacked. There can be no dispute that candidate acquisition of party labels on Washington's ballot—even if billed as self-identification—is a means of garnering the support of those who trust and agree with the party. The "I prefer the D's" and "I prefer the R's" will not be on the ballot for esthetic reasons; they are designed to link candidates to unwilling parties (or at least parties who are unable to express their revulsion) and to encourage voters to cast their ballots based in part on the trust they place in the party's name and the party's philosophy. These harms will be present no matter how Washington's law is implemented. There is therefore "no set of circumstances" under which Washington's law would not severely burden political parties, see *United States* v. *Salerno*, 481 U. S. 739, 745 (1987), and no good reason to wait until Washington has undermined its political parties to declare that it is forbidden to do so.

B

THE CHIEF JUSTICE would wait to see if the law is implemented in a manner that no more harms political parties than allowing a person to state that he "'like[s] Campbell's soup'" would harm the Campbell Soup Company. See *ante*, at 461 (concurring opinion). It is hard to know how to respond. First and most fundamentally, there is simply no comparison between statements of "preference" for an expressive association and statements of "preference" for soup. The robust First Amendment freedom to associate belongs only to groups "engage[d] in 'expressive association,'" *Dale*, 530 U. S., at 648. The Campbell Soup Company does not exist to promote a message, and "there is only minimal constitutional protection of the freedom of *commercial* association," *Roberts* v. *United States Jaycees*, 468 U. S. 609, 634 (1984) (O'Connor, J., concurring in part and concurring in judgment).

Second, I assuredly do not share THE CHIEF JUSTICE's view that the First Amendment will be satisfied so long as the ballot "is designed in such a manner that no reasonable voter would believe that the candidates listed there are nominees or members of, or otherwise associated with, the parties the candidates claimed to 'prefer.'" *Ante*, at 460. To begin with, it seems to me quite impossible for the ballot to satisfy a reasonable voter that the candidate is not "associated with" the party for which he has expressed a preference. He has associated *himself* with the party by his very expression of a preference—and that indeed is the whole purpose of allowing the preference to be expressed. If all THE CHIEF JUSTICE means by "associated with" is that the candidate "does not speak on the party's behalf or with the party's approval," *ante*, at 461, none of my analysis in this opinion relies upon that misperception, nor upon the misperception that the candidate is a member or the nominee of the party. Avoiding those misperceptions is far from enough.

Is it enough to say on the ballot that a notorious and despised racist who says that the party is his choice does not speak with the party's approval? Surely not. His unrebutted association of that party with his views distorts the image of the party nonetheless. And the fact that the candidate who expresses a "preference" for one or another party is shown not to be the nominee of that party does not deprive him of the boost from the party's reputation which the party wishes to confer only on its nominee. THE CHIEF JUSTICE claims that "the content of the ballots in the pertinent respect is yet to be determined," *ante*, at 460. I disagree. We know all we need to know about the form of ballot. When pressed, Washington's attorney general assured us at oral argument that the ballot will *not* say whether the party for whom the candidate expresses a preference claims or disavows him. (Of course it will not, for that would enable the party expression that it is the very object of this legislation to impair.)

And finally, while THE CHIEF JUSTICE earlier expresses his awareness that the special character of the ballot is what makes these cases different, *ante*, at 460, his Campbell's Soup example seems to forget that. If we must speak in terms of soup, Washington's law is like a law that encourages Oscar the Grouch (Sesame Street's famed bad-taste resident of a garbage can) to state a "preference" for Campbell's at every point of sale, while barring the soup company from disavowing his endorsement, or indeed using its name at all, in those same crucial locations. Reserving the most critical communications forum for statements of "preference" by a potentially distasteful speaker alters public perceptions of the entity that is "preferred"; and when this privileged connection undermines not a company's ability to identify and promote soup but an expressive association's ability to identify and promote its message and its standard bearer, the State treads on the constitutionally protected freedom of association.

The majority opinion and THE CHIEF JUSTICE's concurrence also endorse a wait-and-see approach on the grounds that it is not yet evident how the law will affect voter perception of the political parties. But contrary to the Court's suggestion, it is not incumbent on the political parties to adduce "evidence," *ante*, at 457, that forced association affects their ability to advocate for their candidates and their causes. We have never put expressive groups to this perhaps-impossible task. Rather, we accept their own assessments of the matter. The very cases on which THE CHIEF JUSTICE relies for a wait-and-see approach, *ante*, at 459–460, establish as much. In *Dale*, for example, we did not require the Boy Scouts to prove that forced acceptance of the openly homosexual scoutmaster would distort their message. See 530 U. S., at 653 (citing *La Follette*, 450 U. S., at 123–124). Nor in *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557 (1995), did we require the organizers of the St. Patrick's Day Parade to demonstrate that including a gay contingent in the parade would distort their message. See *id.*, at 577. Nor in *Jones*, 530 U. S. 567, did we require the political parties to demonstrate either that voters would incorrectly perceive the "nominee" labels on the ballot to be the products of party elections or that the labels would change voter perceptions of the party. It does not take a study to establish that when statements of party connection are the sole information listed next to candidate names on the ballot, those statements will affect voters' perceptions of what the candidate stands for, what the party stands for, and whom they should elect.

III

Since I conclude that Washington's law imposes a severe burden on political parties' associational rights, I would uphold the law only if it were "narrowly tailored" to advance "a compelling state interest." *Timmons*, 520 U. S., at 358. Neither the Court's opinion nor the State's submission claims that Washington's law passes such scrutiny. The State ar-

gues only that it "has a rational basis" for "providing voters with a modicum of relevant information about the candidates," Brief for Petitioners in No. 06–730, pp. 48–49. This is the only interest the Court's opinion identifies as well. *Ante*, at 458.

But "rational basis" is the *least* demanding of our tests; it is the same test that allows individuals to be taxed at different rates because they are in different businesses. See *Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U. S. 522, 526–527 (1959). It falls far, far short of establishing the compelling state interest that the First Amendment requires. And to tell the truth, here even the existence of a rational basis is questionable. Allowing candidates to identify themselves with particular parties on the ballot displays the State's view that adherence to party philosophy is "an important—perhaps paramount—consideration in the citizen's choice." *Anderson*, 375 U. S., at 402. If that is so, however, it seems to me irrational not to allow the party to disclaim that self-association, or to identify its own endorsed candidate.

It is no mystery what is going on here. There is no state interest behind this law except the Washington Legislature's dislike for bright-colors partisanship, and its desire to blunt the ability of political parties with noncentrist views to endorse and advocate their own candidates. That was the purpose of the Washington system that this enactment was adopted to replace—a system indistinguishable from the one we invalidated in *Jones*, which required parties to allow nonmembers to join in the selection of the candidates shown as their nominees on the election ballot. (The system was held unconstitutional in *Democratic Party of Washington State* v. *Reed*, 343 F. 3d 1198 (CA9 2003).) And it is the obvious purpose of Washington legislation enacted after this law, which requires political parties to repeat a candidate's self-declared party "preference" in electioneering communications concerning the candidate—even if the purpose of the communication is to criticize the candidate and to disavow

any connection between him and the party. Wash. Rev. Code § 42.17.510(1) (2006); see also Wash. Admin. Code § 390–18–020 (2007).

Even if I were to assume, however, that Washington has a legitimate interest in telling voters on the ballot (above all other things) that a candidate *says* he favors a particular political party; and even if I were further to assume *(per impossibile)* that that interest was a compelling one; Washington would still have to "narrowly tailor" its law to protect that interest with minimal intrusion upon the parties' associational rights. There has been no attempt to do that here. Washington could, for example, have permitted parties to disclaim on the general-election ballot the asserted association or to designate on the ballot their true nominees. The course the State has chosen makes sense only as an effort to use its monopoly power over the ballot to undermine the expressive activities of the political parties.

* * *

The right to associate for the election of candidates is fundamental to the operation of our political system, and state action impairing that association bears a heavy burden of justification. Washington's electoral system permits individuals to appropriate the parties' trademarks, so to speak, at the most crucial stage of election, thereby distorting the parties' messages and impairing their endorsement of candidates. The State's justification for this (to convey a "modicum of relevant information") is not only weak but undeserving of credence. We have here a system which, like the one it replaced, does not merely refuse to assist, but positively impairs, the legitimate role of political parties. I dissent from the Court's conclusion that the Constitution permits this sabotage.

Syllabus

SNYDER *v.* LOUISIANA

CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 06–10119. Argued December 4, 2007—Decided March 19, 2008

During *voir dire* in petitioner's capital murder case, the prosecutor used peremptory strikes to eliminate black prospective jurors who had survived challenges for cause. The jury convicted petitioner and sentenced him to death. Both on direct appeal and on remand in light of *Miller-El* v. *Dretke*, 545 U. S. 231, the Louisiana Supreme Court rejected petitioner's claim that the prosecution's peremptory strikes of certain prospective jurors, including Mr. Brooks, were based on race, in violation of *Batson* v. *Kentucky*, 476 U. S. 79.

Held: The trial judge committed clear error in rejecting the *Batson* objection to the strike of Mr. Brooks. Pp. 476–486.

(a) Under *Batson*'s three-step process for adjudicating claims such as petitioner's, (1) a defendant must make a prima facie showing that the challenge was based on race; (2) if so, "'the prosecution must offer a race-neutral basis for striking the juror in question'"; and (3) "'in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination.'" *Miller-El*, *supra*, at 277 (THOMAS, J., dissenting) (quoting *Miller-El* v. *Cockrell*, 537 U. S. 322, 328–329). Unless it is clearly erroneous, the trial court's ruling must be sustained on appeal. The trial court's role is pivotal, for it must evaluate the demeanor of the prosecutor exercising the challenge and the juror being excluded. Pp. 476–477.

(b) While all of the circumstances bearing on the racial-animosity issue must be consulted in considering a *Batson* objection or reviewing a ruling claimed to be a *Batson* error, the explanation given for striking Mr. Brooks, a college senior attempting to fulfill his student-teaching obligation, is insufficient by itself and suffices for a *Batson* error determination. Pp. 477–486.

(1) It cannot be presumed that the trial court credited the prosecution's first race-neutral reason, that Mr. Brooks looked nervous. Deference is owed to a trial judge's finding that an attorney credibly relied on demeanor in exercising a strike, but here, the trial judge simply allowed the challenge without explanation. Since Mr. Brooks was not challenged until the day after he was questioned and thus after dozens of other jurors had been called, the judge might not have recalled his demeanor. Or he may have found such consideration unnecessary, in-

stead basing his ruling on the second proffered reason for the strike. P. 479.

(2) That reason—Mr. Brooks' student-teaching obligation—fails even under the highly deferential standard of review applicable here. Mr. Brooks was 1 of more than 50 venire members expressing concern that jury service or sequestration would interfere with work, school, family, or other obligations. Although he was initially concerned about making up lost teaching time, he expressed no further concern once a law clerk reported that the school's dean would work with Mr. Brooks if he missed time for a trial that week, and the prosecutor did not question him more deeply about the matter. The proffered reason must be evaluated in light of the circumstances that the colloquy and law clerk report took place on Tuesday, the prosecution struck Mr. Brooks on Wednesday, the trial's guilt phase ended on Thursday, and its penalty phase ended on Friday. The prosecutor's scenario—that Mr. Brooks would have been inclined to find petitioner guilty of a lesser included offense to obviate the need for a penalty phase—is both highly speculative and unlikely. Mr. Brooks would be in a position to shorten the trial only if most or all of the jurors had favored a lesser verdict. Perhaps most telling, the trial's brevity, which the prosecutor anticipated on the record during *voir dire*, meant that jury service would not have seriously interfered with Mr. Brooks' ability to complete his student teaching. The dean offered to work with him, and the trial occurred relatively early in the fall term, giving Mr. Brooks several weeks to make up the time. The implausibility of the prosecutor's explanation is reinforced by his acceptance of white jurors who disclosed conflicting obligations that appear to have been at least as serious as Mr. Brooks'. Under *Batson*'s third stage, the prosecution's pretextual explanation gives rise to an inference of discriminatory intent. There is no need to decide here whether, in *Batson* cases, once a discriminatory intent is shown to be a motivating factor, the burden shifts to the prosecution to show that the discriminatory factor was not determinative. It is enough to recognize that a peremptory strike shown to have been motivated in substantial part by discriminatory intent could not be sustained based on any lesser showing by the prosecution. The record here does not show that the prosecution would have pre-emptively challenged Mr. Brooks based on his nervousness alone, and there is no realistic possibility that the subtle question of causation could be profitably explored further on remand more than a decade after petitioner's trial. Pp. 479–486.

942 So. 2d 484, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, *post*, p. 486.

Stephen B. Bright argued the cause for petitioner. With him on the briefs were *Jelpi P. Picou, Jr.*, and *Marcia Widder*.

Terry M. Boudreaux argued the cause for respondent. With him on the brief was *Paul D. Connick, Jr.**

JUSTICE ALITO delivered the opinion of the Court.

Petitioner Allen Snyder was convicted of first-degree murder in a Louisiana court and was sentenced to death. He asks us to review a decision of the Louisiana Supreme Court rejecting his claim that the prosecution exercised some of its peremptory jury challenges based on race, in violation of *Batson* v. *Kentucky*, 476 U. S. 79 (1986). We hold that the trial court committed clear error in its ruling on a *Batson* objection, and we therefore reverse.

I

The crime for which petitioner was convicted occurred in August 1995. At that time, petitioner and his wife, Mary, had separated. On August 15, they discussed the possibility of reconciliation, and Mary agreed to meet with petitioner the next day. That night, Mary went on a date with Howard Wilson. During the evening, petitioner repeatedly attempted to page Mary, but she did not respond. At approximately 1:30 a.m. on August 16, Wilson drove up to the home of Mary's mother to drop Mary off. Petitioner was waiting at the scene armed with a knife. He opened the driver's side door of Wilson's car and repeatedly stabbed the occu-

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*Briefs of *amici curiae* urging reversal were filed for the Constitution Project by *Seth P. Waxman, Brian M. Boynton, Elisabeth Semel*, and *Ty Alper*; and for Nine Jefferson Parish Ministers by *Samuel Dalton* and *James E. Boren*.

pants, killing Wilson and wounding Mary. The State charged petitioner with first-degree murder and sought the death penalty based on the aggravating circumstance that petitioner had knowingly created a risk of death or great bodily harm to more than one person. See La. Code Crim. Proc. Ann., Art. 905.4(A)(4) (West Supp. 2008).

Voir dire began on Tuesday, August 27, 1996, and proceeded as follows. During the first phase, the trial court screened the panel to identify jurors who did not meet Louisiana's requirements for jury service or claimed that service on the jury or sequestration for the duration of the trial would result in extreme hardship. More than 50 prospective jurors reported that they had work, family, or other commitments that would interfere with jury service. In each of those instances, the nature of the conflicting commitments was explored, and some of these jurors were dismissed. App. 58–164.

In the next phase, the court randomly selected panels of 13 potential jurors for further questioning. *Id.*, at 166–167. The defense and prosecution addressed each panel and questioned the jurors both as a group and individually. At the conclusion of this questioning, the court ruled on challenges for cause. Then, the prosecution and the defense were given the opportunity to use peremptory challenges (each side had 12) to remove remaining jurors. The court continued this process of calling 13-person panels until the jury was filled. In accordance with Louisiana law, the parties were permitted to exercise "backstrikes." That is, they were allowed to use their peremptories up until the time when the final jury was sworn and thus were permitted to strike jurors whom they had initially accepted when the jurors' panels were called. See La. Code Crim. Proc. Ann., Art. 795(B)(1) (West 1998); *State* v. *Taylor*, 93–2201, pp. 22–23 (La. 2/28/96), 669 So. 2d 364, 376.

Eighty-five prospective jurors were questioned as members of a panel. Thirty-six of these survived challenges for

cause; 5 of the 36 were black (as is petitioner); and all 5 of the prospective black jurors were eliminated by the prosecution through the use of peremptory strikes. The jury found petitioner guilty of first-degree murder and determined that he should receive the death penalty.

On direct appeal, the Louisiana Supreme Court conditionally affirmed petitioner's conviction. The court rejected petitioner's *Batson* claim but remanded the case for a *nunc pro tunc* determination of petitioner's competency to stand trial. *State* v. *Snyder*, 98–1078 (La. 4/14/99), 750 So. 2d 832. Two justices dissented and would have found a *Batson* violation. See *id.*, at 866 (Johnson, J., dissenting), 863 (Lemmon, J., concurring in part and dissenting in part).

On remand, the trial court found that petitioner had been competent to stand trial, and the Louisiana Supreme Court affirmed that determination. *State* v. *Snyder*, 1998–1078 (La. 4/14/04), 874 So. 2d 739. Petitioner petitioned this Court for a writ of certiorari, and while his petition was pending, this Court decided *Miller-El* v. *Dretke*, 545 U. S. 231 (2005). We then granted the petition, vacated the judgment, and remanded the case to the Louisiana Supreme Court for further consideration in light of *Miller-El*. *Snyder* v. *Louisiana*, 545 U. S. 1137 (2005). On remand, the Louisiana Supreme Court again rejected Snyder's *Batson* claim, this time by a vote of 4 to 3. See 1998–1078 (La. 9/6/06), 942 So. 2d 484. We again granted certiorari, 551 U. S. 1144 (2007), and now reverse.

II

Batson provides a three-step process for a trial court to use in adjudicating a claim that a peremptory challenge was based on race:

> "'First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race[; s]econd, if that showing has been made,

> the prosecution must offer a race-neutral basis for striking the juror in question[; and t]hird, in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination.'" *Miller-El* v. *Dretke*, *supra*, at 277 (THOMAS, J., dissenting) (quoting *Miller-El* v. *Cockrell*, 537 U. S. 322, 328–329 (2003)).

On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous. See *Hernandez* v. *New York*, 500 U. S. 352, 369 (1991) (plurality opinion); *id.*, at 372 (O'Connor, J., joined by SCALIA, J., concurring in judgment). The trial court has a pivotal role in evaluating *Batson* claims. Step three of the *Batson* inquiry involves an evaluation of the prosecutor's credibility, see 476 U. S., at 98, n. 21, and "the best evidence [of discriminatory intent] often will be the demeanor of the attorney who exercises the challenge," *Hernandez*, 500 U. S., at 365 (plurality opinion). In addition, race-neutral reasons for peremptory challenges often invoke a juror's demeanor (*e. g.*, nervousness, inattention), making the trial court's firsthand observations of even greater importance. In this situation, the trial court must evaluate not only whether the prosecutor's demeanor belies a discriminatory intent, but also whether the juror's demeanor can credibly be said to have exhibited the basis for the strike attributed to the juror by the prosecutor. We have recognized that these determinations of credibility and demeanor lie "'peculiarly within a trial judge's province,'" *ibid.* (quoting *Wainwright* v. *Witt*, 469 U. S. 412, 428 (1985)), and we have stated that "in the absence of exceptional circumstances, we would defer to [the trial court]," 500 U. S., at 366 (plurality opinion).

III

Petitioner centers his *Batson* claim on the prosecution's strikes of two black jurors, Jeffrey Brooks and Elaine Scott.

Because we find that the trial court committed clear error in overruling petitioner's *Batson* objection with respect to Mr. Brooks, we have no need to consider petitioner's claim regarding Ms. Scott. See, *e. g.*, *United States* v. *Vasquez-Lopez*, 22 F. 3d 900, 902 (CA9 1994) ("[T]he Constitution forbids striking even a single prospective juror for a discriminatory purpose"); *United States* v. *Lane*, 866 F. 2d 103, 105 (CA4 1989); *United States* v. *Clemons*, 843 F. 2d 741, 747 (CA3 1988); *United States* v. *Battle*, 836 F. 2d 1084, 1086 (CA8 1987); *United States* v. *David*, 803 F. 2d 1567, 1571 (CA11 1986).

In *Miller-El* v. *Dretke*, the Court made it clear that in considering a *Batson* objection, or in reviewing a ruling claimed to be *Batson* error, all of the circumstances that bear upon the issue of racial animosity must be consulted. 545 U. S., at 239. Here, as just one example, if there were persisting doubts as to the outcome, a court would be required to consider the strike of Ms. Scott for the bearing it might have upon the strike of Mr. Brooks. In this case, however, the explanation given for the strike of Mr. Brooks is by itself unconvincing and suffices for the determination that there was *Batson* error.

When defense counsel made a *Batson* objection concerning the strike of Mr. Brooks, a college senior who was attempting to fulfill his student-teaching obligation, the prosecution offered two race-neutral reasons for the strike. The prosecutor explained:

> "I thought about it last night. Number 1, the main reason is that he looked very nervous to me throughout the questioning. Number 2, he's one of the fellows that came up at the beginning [of *voir dire*] and said he was going to miss class. He's a student teacher. My main concern is for that reason, that being that he might, to go home quickly, come back with guilty of a lesser verdict so there wouldn't be a penalty phase. Those are my two reasons." App. 444.

Defense counsel disputed both explanations, *id.*, at 444–445, and the trial judge ruled as follows: "All right. I'm going [to] allow the challenge. I'm going to allow the challenge," *id.*, at 445. We discuss the prosecution's two proffered grounds for striking Mr. Brooks in turn.

A

With respect to the first reason, the Louisiana Supreme Court was correct that "nervousness cannot be shown from a cold transcript, which is why . . . the [trial] judge's evaluation must be given much deference." 942 So. 2d, at 496. As noted above, deference is especially appropriate where a trial judge has made a finding that an attorney credibly relied on demeanor in exercising a strike. Here, however, the record does not show that the trial judge actually made a determination concerning Mr. Brooks' demeanor. The trial judge was given two explanations for the strike. Rather than making a specific finding on the record concerning Mr. Brooks' demeanor, the trial judge simply allowed the challenge without explanation. It is possible that the judge did not have any impression one way or the other concerning Mr. Brooks' demeanor. Mr. Brooks was not challenged until the day after he was questioned, and by that time dozens of other jurors had been questioned. Thus, the trial judge may not have recalled Mr. Brooks' demeanor. Or, the trial judge may have found it unnecessary to consider Mr. Brooks' demeanor, instead basing his ruling completely on the second proffered justification for the strike. For these reasons, we cannot presume that the trial judge credited the prosecutor's assertion that Mr. Brooks was nervous.

B

The second reason proffered for the strike of Mr. Brooks—his student-teaching obligation—fails even under the highly deferential standard of review that is applicable here. At the beginning of *voir dire*, when the trial court asked the

members of the venire whether jury service or sequestration would pose an extreme hardship, Mr. Brooks was 1 of more than 50 members of the venire who expressed concern that jury service or sequestration would interfere with work, school, family, or other obligations.

When Mr. Brooks came forward, the following exchange took place:

> "MR. JEFFREY BROOKS: . . . I'm a student at Southern University, New Orleans. This is my last semester. My major requires me to student teach, and today I've already missed a half a day. That is part of my—it's required for me to graduate this semester.
>
> "[DEFENSE COUNSEL]: Mr. Brooks, if you—how many days would you miss if you were sequestered on this jury? Do you teach every day?
>
> "MR. JEFFREY BROOKS: Five days a week.
>
> "[DEFENSE COUNSEL]: Five days a week.
>
> "MR. JEFFREY BROOKS: And it's 8:30 through 3:00.
>
> "[DEFENSE COUNSEL]: If you missed this week, is there any way that you could make it up this semester?
>
> "MR. JEFFREY BROOKS: Well, the first two weeks I observe, the remaining I begin teaching, so there is something I'm missing right now that will better me towards my teaching career.
>
> "[DEFENSE COUNSEL]: Is there any way that you could make up the observed observation *[sic]* that you're missing today, at another time?
>
> "MR. JEFFREY BROOKS: It may be possible, I'm not sure.
>
> "[DEFENSE COUNSEL]: Okay. So that—
>
> "THE COURT: Is there anyone we could call, like a Dean or anything, that we could speak to?
>
> "MR. JEFFREY BROOKS: Actually I spoke to my Dean, Doctor Tillman, who's at the university probably right now.
>
> "THE COURT: All right.

"MR. JEFFREY BROOKS: Would you like to speak to him?

"THE COURT: Yeah.

"MR. JEFFREY BROOKS: I don't have his card on me.

"THE COURT: Why don't you give [a law clerk] his number, give [a law clerk] his name and we'll call him and we'll see what we can do.

"(MR. JEFFREY BROOKS LEFT THE BENCH)." App. 102–104.

Shortly thereafter, the court again spoke with Mr. Brooks:

"THE LAW CLERK: Jeffrey Brooks, the requirement for his teaching is a three hundred clock hour observation. Doctor Tillman at Southern University said that as long as it's just this week, he doesn't see that it would cause a problem with Mr. Brooks completing his observation time within this semester.

"(MR. BROOKS APPROACHED THE BENCH)

"THE COURT: We talked to Doctor Tillman and he says he doesn't see a problem as long as it's just this week, you know, he'll work with you on it. Okay?

"MR. JEFFREY BROOKS: Okay.

"(MR. JEFFREY BROOKS LEFT THE BENCH)." *Id.*, at 116.

Once Mr. Brooks heard the law clerk's report about the conversation with Doctor Tillman, Mr. Brooks did not express any further concern about serving on the jury, and the prosecution did not choose to question him more deeply about this matter.

The colloquy with Mr. Brooks and the law clerk's report took place on Tuesday, August 27; the prosecution struck Mr. Brooks the following day, Wednesday, August 28; the guilt phase of petitioner's trial ended the next day, Thursday, August 29; and the penalty phase was completed by the end of the week, on Friday, August 30.

The prosecutor's second proffered reason for striking Mr. Brooks must be evaluated in light of these circumstances. The prosecutor claimed to be apprehensive that Mr. Brooks, in order to minimize the student-teaching hours missed during jury service, might have been motivated to find petitioner guilty, not of first-degree murder, but of a lesser included offense because this would obviate the need for a penalty phase proceeding. But this scenario was highly speculative. Even if Mr. Brooks had favored a quick resolution, that would not have necessarily led him to reject a finding of first-degree murder. If the majority of jurors had initially favored a finding of first-degree murder, Mr. Brooks' purported inclination might have led him to agree in order to speed the deliberations. Only if all or most of the other jurors had favored the lesser verdict would Mr. Brooks have been in a position to shorten the trial by favoring such a verdict.

Perhaps most telling, the brevity of petitioner's trial—something that the prosecutor anticipated on the record during *voir dire*[1]—meant that serving on the jury would not have seriously interfered with Mr. Brooks' ability to complete his required student teaching. As noted, petitioner's trial was completed by Friday, August 30. If Mr. Brooks, who reported to court and was peremptorily challenged on Wednesday, August 28, had been permitted to serve, he would have missed only two additional days of student teaching, Thursday, August 29, and Friday, August 30. Mr. Brooks' dean promised to "work with" Mr. Brooks to see that he was able to make up any student-teaching time that he missed due to jury service; the dean stated that he did not think that this would be a problem; and the record contains no suggestion that Mr. Brooks remained troubled after hearing the report of the dean's remarks. In addition, although the record does not include the academic calendar of

[1] See, *e. g.*, App. 98, 105, 111, 121, 130, 204.

Mr. Brooks' university, it is apparent that the trial occurred relatively early in the fall semester. With many weeks remaining in the term, Mr. Brooks would have needed to make up no more than an hour or two per week in order to compensate for the time that he would have lost due to jury service. When all of these considerations are taken into account, the prosecutor's second proffered justification for striking Mr. Brooks is suspicious.

The implausibility of this explanation is reinforced by the prosecutor's acceptance of white jurors who disclosed conflicting obligations that appear to have been at least as serious as Mr. Brooks'. We recognize that a retrospective comparison of jurors based on a cold appellate record may be very misleading when alleged similarities were not raised at trial. In that situation, an appellate court must be mindful that an exploration of the alleged similarities at the time of trial might have shown that the jurors in question were not really comparable. In this case, however, the shared characteristic, *i. e.*, concern about serving on the jury due to conflicting obligations, was thoroughly explored by the trial court when the relevant jurors asked to be excused for cause.[2]

A comparison between Mr. Brooks and Roland Laws, a white juror, is particularly striking. During the initial stage of *voir dire*, Mr. Laws approached the court and offered strong reasons why serving on the sequestered jury would cause him hardship. Mr. Laws stated that he was "a self-employed general contractor," with "two houses that are nearing completion, one [with the occupants] . . . moving in this weekend." *Id.*, at 129. He explained that, if he served on the jury, "the people won't [be able to] move

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[2]The Louisiana Supreme Court did not hold that petitioner had procedurally defaulted reliance on a comparison of the African-American jurors whom the prosecution struck with white jurors whom the prosecution accepted. On the contrary, the State Supreme Court itself made such a comparison. See 942 So. 2d 484, 495–496 (2006).

in." *Id.*, at 130. Mr. Laws also had demanding family obligations:

> "[M]y wife just had a hysterectomy, so I'm running the kids back and forth to school, and we're not originally from here, so I have no family in the area, so between the two things, it's kind of bad timing for me." *Ibid.*

Although these obligations seem substantially more pressing than Mr. Brooks', the prosecution questioned Mr. Laws and attempted to elicit assurances that he would be able to serve despite his work and family obligations. See *ibid.* (prosecutor asking Mr. Laws "[i]f you got stuck on jury duty anyway . . . would you try to make other arrangements as best you could?"). And the prosecution declined the opportunity to use a peremptory strike on Mr. Laws. *Id.*, at 549. If the prosecution had been sincerely concerned that Mr. Brooks would favor a lesser verdict than first-degree murder in order to shorten the trial, it is hard to see why the prosecution would not have had at least as much concern regarding Mr. Laws.

The situation regarding another white juror, John Donnes, although less fully developed, is also significant. At the end of the first day of *voir dire*, Mr. Donnes approached the court and raised the possibility that he would have an important work commitment later that week. *Id.*, at 349. Because Mr. Donnes stated that he would know the next morning whether he would actually have a problem, the court suggested that Mr. Donnes raise the matter again at that time. *Ibid.* The next day, Mr. Donnes again expressed concern about serving, stating that, in order to serve, "I'd have to cancel too many things," including an urgent appointment at which his presence was essential. *Id.*, at 467–468. Despite Mr. Donnes' concern, the prosecution did not strike him. *Id.*, at 490.

As previously noted, the question presented at the third stage of the *Batson* inquiry is "'whether the defendant has

shown purposeful discrimination.'" *Miller-El* v. *Dretke*, 545 U. S., at 277 (THOMAS, J., dissenting). The prosecution's proffer of this pretextual explanation naturally gives rise to an inference of discriminatory intent. See *id.*, at 252 (opinion of the Court) (noting the "pretextual significance" of a "stated reason [that] does not hold up"); *Purkett* v. *Elem*, 514 U. S. 765, 768 (1995) *(per curiam)* ("At [the third] stage, implausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination"); *Hernandez*, 500 U. S., at 365 (plurality opinion) ("In the typical peremptory challenge inquiry, the decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed"). Cf. *St. Mary's Honor Center* v. *Hicks*, 509 U. S. 502, 511 (1993) ("[R]ejection of the defendant's proffered [nondiscriminatory] reasons will *permit* the trier of fact to infer the ultimate fact of intentional discrimination").

In other circumstances, we have held that, once it is shown that a discriminatory intent was a substantial or motivating factor in an action taken by a state actor, the burden shifts to the party defending the action to show that this factor was not determinative. See *Hunter* v. *Underwood*, 471 U. S. 222, 228 (1985). We have not previously applied this rule in a *Batson* case, and we need not decide here whether that standard governs in this context. For present purposes, it is enough to recognize that a peremptory strike shown to have been motivated in substantial part by discriminatory intent could not be sustained based on any lesser showing by the prosecution. And in light of the circumstances here—including absence of anything in the record showing that the trial judge credited the claim that Mr. Brooks was nervous, the prosecution's description of both of its proffered explanations as "main concern[s]," App. 444, and the adverse inference noted above—the record does not show that the prosecution would have pre-emptively challenged Mr. Brooks based on his nervousness alone. See *Hunter*, *supra*, at 228.

Nor is there any realistic possibility that this subtle question of causation could be profitably explored further on remand at this late date, more than a decade after petitioner's trial.

* * *

We therefore reverse the judgment of the Louisiana Supreme Court and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

Petitioner essentially asks this Court to second-guess the fact-based determinations of the Louisiana courts as to the reasons for a prosecutor's decision to strike two jurors. The evaluation of a prosecutor's motives for striking a juror is at bottom a credibility judgment, which lies "'peculiarly within a trial judge's province.'" *Hernandez* v. *New York*, 500 U. S. 352, 365 (1991) (plurality opinion) (quoting *Wainwright* v. *Witt*, 469 U. S. 412, 428 (1985)); *Hernandez*, *supra*, at 372 (O'Connor, J., concurring in judgment); *ante*, at 477. "[I]n the absence of exceptional circumstances, we [should] defer to state-court factual findings." *Hernandez*, 500 U. S., at 366 (plurality opinion). None of the evidence in the record as to jurors Jeffrey Brooks and Elaine Scott demonstrates that the trial court clearly erred in finding they were not stricken on the basis of race. Because the trial court's determination was a "permissible view of the evidence," *id.*, at 369, I would affirm the judgment of the Louisiana Supreme Court.

The Court begins by setting out the "deferential standard," *ante*, at 479, that we apply to a trial court's resolution of a *Batson* v. *Kentucky*, 476 U. S. 79 (1986), claim, noting that we will overturn a ruling on the question of discriminatory intent only if it is "clearly erroneous," *ante*, at 477. Under this standard, we "will not reverse a lower court's

finding of fact simply because we would have decided the case differently." *Easley* v. *Cromartie*, 532 U. S. 234, 242 (2001) (internal quotation marks omitted). Instead, a reviewing court must ask "whether, 'on the entire evidence,' it is 'left with the definite and firm conviction that a mistake has been committed.'" *Ibid.* (quoting *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395 (1948)).

The Court acknowledges two reasons why a trial court "has a pivotal role in evaluating *Batson* claims." *Ante*, at 477. First, the Court notes that the trial court is uniquely situated to judge the prosecutor's credibility because the best evidence of discriminatory intent "'often will be the demeanor of the attorney who exercises the challenge.'" *Ibid.* (quoting *Hernandez*, *supra*, at 365 (plurality opinion)). Second, it recognizes that the trial court's "first-hand observations" of the juror's demeanor are of "grea[t] importance" in determining whether the prosecutor's neutral basis for the strike is credible. *Ante*, at 477.

The Court's conclusion, however, reveals that it is only paying lipservice to the pivotal role of the trial court. The Court second-guesses the trial court's determinations in this case merely because the judge did not clarify which of the prosecutor's neutral bases for striking Mr. Brooks was dispositive. But we have never suggested that a reviewing court should defer to a trial court's resolution of a *Batson* challenge only if the trial court made specific findings with respect to each of the prosecutor's proffered race-neutral reasons. To the contrary, when the grounds for a trial court's decision are ambiguous, an appellate court should not presume that the lower court based its decision on an improper ground, particularly when applying a deferential standard of review. See *Sprint/United Management Co.* v. *Mendelsohn*, *ante*, at 386.

The prosecution offered two neutral bases for striking Mr. Brooks: his nervous demeanor and his stated concern about missing class. App. 444. The trial court, in rejecting

defendant's *Batson* challenge, stated only "All right. I'm going [to] allow the challenge. I'm going to allow the challenge." App. 445. The Court concedes that "the record does not show" whether the trial court made its determination based on Mr. Brooks' demeanor or his concern for missing class, *ante*, at 479, but then speculates as to what the trial court *might* have thought about Mr. Brooks' demeanor. As a result of that speculation, the Court concludes that it "cannot presume that the trial judge credited the prosecutor's assertion that Mr. Brooks was nervous." *Ibid.* Inexplicably, however, the Court concludes that it *can* presume that the trial court impermissibly relied on the prosecutor's supposedly pretextual concern about Mr. Brooks' teaching schedule, even though nothing in the record supports that interpretation over the one the Court rejects.

Indeed, if the record suggests anything, it is that the judge was more influenced by Mr. Brooks' nervousness than by his concern for missing class. Following an exchange about whether his desire to get back to class would make Mr. Brooks more likely to support a verdict on a lesser included offense because it might avoid a penalty phase, defense counsel offered its primary rebuttal to the prosecutor's proffered neutral reasons. Immediately after argument on the nervousness point, the judge ruled on the *Batson* challenge, even interrupting the prosecutor to do so:

> "MR. VASQUEZ: . . . His main problem yesterday was the fact that he didn't know if he would miss some teaching time as a student teacher. The clerk called the school and whoever it was and the Dean said that wouldn't be a problem. He was told that this would go through the weekend, and he expressed that that was his only concern, that he didn't have any other problems.
>
> "As far as him looking nervous, hell, everybody out here looks nervous. I'm nervous.
>
> "MR. OLINDE: Judge, it's—

"MR. VASQUEZ: Judge, that's—You know.

"MR. OLINDE: —a question of this: It's a peremptory challenge. We need 12 out of 12 people. Mr. Brooks was very uncertain and very nervous looking and—

"THE COURT: All right. I'm going [to] allow the challenge. I'm going to allow the challenge." App. 445.

Although this exchange is certainly not hard-and-fast evidence of the trial court's reasoning, it undermines the Court's presumption that the trial judge relied solely on Mr. Brooks' concern for missing school.

The Court also concludes that the trial court's determination lacked support in the record because the prosecutor failed to strike two other jurors with similar concerns. *Ante*, at 483–484. Those jurors, however, were never mentioned in the argument before the trial court, nor were they discussed in the filings or opinions on any of the three occasions this case was considered by the Louisiana Supreme Court.* Petitioner failed to suggest a comparison with those two jurors in his petition for certiorari, and apparently only discovered this "clear error" in the record when drafting his brief before this Court. We have no business overturning a conviction, years after the fact and after extensive intervening litigation, based on arguments not presented to the courts below. Cf. *Miller-El* v. *Dretke*, 545 U. S. 231, 283 (2005) (THOMAS, J., dissenting).

Because I believe that the trial court did not clearly err in rejecting petitioner's *Batson* challenge with respect to Mr. Brooks, I also must address the strike of Ms. Scott. The prosecution's neutral explanation for striking Ms. Scott was

*While the Court correctly observes that the Louisiana Supreme Court made a comparison between Mr. Brooks and unstricken white jurors, that is true only as to jurors Vicki Chauffe, Michael Sandras, and Arthur Yeager. 1998–1078, pp. 15–18 (La. 9/6/06), 942 So. 2d 484, 495–496. The Court, on the other hand, focuses on Roland Laws and John Donnes, who were never discussed below in this context.

that she was unsure about her ability to impose the death penalty. Like the claims made about Mr. Brooks, there is very little in the record either to support or to undermine the prosecution's asserted rationale for striking Ms. Scott. But the trial court had the benefit of observing the exchange between the prosecutor and Ms. Scott, and accordingly was in the best position to judge whether the prosecutor's assessment of her response was credible. When asked if she could consider the death penalty, her first response was inaudible. App. 360. The trial court, with the benefit of contextual clues not apparent on a cold transcript, was better positioned to evaluate whether Ms. Scott was merely soft-spoken or seemed hesitant in her responses. Similarly, a firsthand observation of demeanor is the only thing that could give sufficient content to Ms. Scott's ultimate response—"I think I could," *id.*, at 361—to determine whether the prosecution's concern about her willingness to impose the death penalty was well founded. Given the trial court's expertise in making credibility determinations and its firsthand knowledge of the *voir dire* exchanges, it is entirely proper to defer to its judgment. Accordingly, I would affirm the judgment below.

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MEDELLIN *v.* TEXAS

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

No. 06–984. Argued October 10, 2007—Decided March 25, 2008

In the *Case Concerning Avena and Other Mexican Nationals* (*Mex.* v. *U. S.*), 2004 I. C. J. 12 (*Avena*), the International Court of Justice (ICJ) held that the United States had violated Article 36(1)(b) of the Vienna Convention on Consular Relations (Vienna Convention or Convention) by failing to inform 51 named Mexican nationals, including petitioner Medellín, of their Vienna Convention rights. The ICJ found that those named individuals were entitled to review and reconsideration of their U. S. state-court convictions and sentences regardless of their failure to comply with generally applicable state rules governing challenges to criminal convictions. In *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331—issued after *Avena* but involving individuals who were not named in the *Avena* judgment—this Court held, contrary to the ICJ's determination, that the Convention did not preclude the application of state default rules. The President then issued a memorandum (President's Memorandum or Memorandum) stating that the United States would "discharge its international obligations" under *Avena* "by having State courts give effect to the decision."

Relying on *Avena* and the President's Memorandum, Medellín filed a second Texas state-court habeas application challenging his state capital murder conviction and death sentence on the ground that he had not been informed of his Vienna Convention rights. The Texas Court of Criminal Appeals dismissed Medellín's application as an abuse of the writ, concluding that neither *Avena* nor the President's Memorandum was binding federal law that could displace the State's limitations on filing successive habeas applications.

Held: Neither *Avena* nor the President's Memorandum constitutes directly enforceable federal law that pre-empts state limitations on the filing of successive habeas petitions. Pp. 504–532.

1. The *Avena* judgment is not directly enforceable as domestic law in state court. Pp. 504–523.

(a) While a treaty may constitute an international commitment, it is not binding domestic law unless Congress has enacted statutes implementing it or the treaty itself conveys an intention that it be "self-executing" and is ratified on that basis. See, *e. g.*, *Foster* v. *Neilson*, 2 Pet. 253, 314. The *Avena* judgment creates an international law obligation on the part of the United States, but it is not automatically binding

domestic law because none of the relevant treaty sources—the Optional Protocol, the United Nations Charter, or the ICJ Statute—creates binding federal law in the absence of implementing legislation, and no such legislation has been enacted.

The most natural reading of the Optional Protocol is that it is a bare grant of jurisdiction. The Protocol says nothing about the effect of an ICJ decision, does not commit signatories to comply therewith, and is silent as to any enforcement mechanism. The obligation to comply with ICJ judgments is derived from Article 94 of the U. N. Charter, which provides that "[e]ach . . . Member . . . undertakes to comply with the [ICJ's] decision . . . in any case to which it is a party." The phrase "undertakes to comply" is simply a commitment by member states to take future action through their political branches. That language does not indicate that the Senate, in ratifying the Optional Protocol, intended to vest ICJ decisions with immediate legal effect in domestic courts.

This reading is confirmed by Article 94(2)—the enforcement provision—which provides the sole remedy for noncompliance: referral to the U. N. Security Council by an aggrieved state. The provision of an express diplomatic rather than judicial remedy is itself evidence that ICJ judgments were not meant to be enforceable in domestic courts. See *Sanchez-Llamas*, 548 U. S., at 347. Even this "quintessentially *international* remed[y]," *id.*, at 355, is not absolute. It requires a Security Council resolution, and the President and Senate were undoubtedly aware that the United States retained the unqualified right to exercise its veto of any such resolution. Medellín's construction would eliminate the option of noncompliance contemplated by Article 94(2), undermining the ability of the political branches to determine whether and how to comply with an ICJ judgment.

The ICJ Statute, by limiting disputes to those involving nations, not individuals, and by specifying that ICJ decisions have no binding force except between those nations, provides further evidence that the *Avena* judgment does not automatically constitute federal law enforceable in U. S. courts. Medellín, an individual, cannot be considered a party to the *Avena* decision. Finally, the United States' interpretation of a treaty "is entitled to great weight," *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U. S. 176, 184–185, and the Executive Branch has unfailingly adhered to its view that the relevant treaties do not create domestically enforceable federal law. Pp. 504–514.

(b) The foregoing interpretive approach—parsing a treaty's text to determine if it is self-executing—is hardly novel. This Court has long looked to the language of a treaty to determine whether the President who negotiated it and the Senate that ratified it intended that the treaty

automatically create domestically enforceable federal law. See, *e. g.*, *Foster*, *supra*. Pp. 514–516.

(c) The Court's conclusion that *Avena* does not by itself constitute binding federal law is confirmed by the "postratification understanding" of signatory countries. See *Zicherman* v. *Korean Air Lines Co.*, 516 U. S. 217, 226. There are currently 47 nations that are parties to the Optional Protocol and 171 nations that are parties to the Vienna Convention. Yet neither Medellín nor his *amici* have identified a single nation that treats ICJ judgments as binding in domestic courts. The lack of any basis for supposing that any other country would treat ICJ judgments as directly enforceable as a matter of its domestic law strongly suggests that the treaty should not be so viewed in our courts. See *Sanchez-Llamas*, 548 U. S., at 343–344, and n. 3.

The Court's conclusion is further supported by general principles of interpretation. Given that the forum state's procedural rules govern a treaty's implementation absent a clear and express statement to the contrary, see, *e. g.*, *id.*, at 351, one would expect the ratifying parties to the relevant treaties to have clearly stated any intent to give ICJ judgments such effect. There is no statement in the Optional Protocol, the U. N. Charter, or the ICJ Statute that supports this notion. Moreover, the consequences of Medellín's argument give pause: neither Texas nor this Court may look behind an ICJ decision and quarrel with its reasoning or result, despite this Court's holding in *Sanchez-Llamas* that "[n]othing in the [ICJ's] structure or purpose . . . suggests that its interpretations were intended to be conclusive on our courts," *id.*, at 354. Pp. 516–519.

(d) The Court's holding does not call into question the ordinary enforcement of foreign judgments. An agreement to abide by the result of an international adjudication can be a treaty obligation like any other, so long as the agreement is consistent with the Constitution. In addition, Congress is up to the task of implementing non-self-executing treaties, even those involving complex commercial disputes. Medellín contends that domestic courts generally give effect to foreign judgments, but the judgment Medellín asks us to enforce is hardly typical: It would enjoin the operation of state law and force the State to take action to "review and reconside[r]" his case. Foreign judgments awarding injunctive relief against private parties, let alone sovereign States, "are not generally entitled to enforcement." 1 Restatement (Third) of Foreign Relations Law of the United States §481, Comment *b*, p. 595 (1986). Pp. 519–523.

2. The President's Memorandum does not independently require the States to provide review and reconsideration of the claims of the 51

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Mexican nationals named in *Avena* without regard to state procedural default rules. Pp. 523–532.

(a) The President seeks to vindicate plainly compelling interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law. But those interests do not allow the Court to set aside first principles. The President's authority to act, as with the exercise of any governmental power, "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 585.

Justice Jackson's familiar tripartite scheme provides the accepted framework for evaluating executive action in this area. First, "[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Id.*, at 635 (Jackson, J., concurring). Second, "[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." *Id.*, at 637. In such a circumstance, Presidential authority can derive support from "congressional inertia, indifference or quiescence." *Ibid.* Finally, "[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb," and the Court can sustain his actions "only by disabling the Congress from acting upon the subject." *Id.*, at 637–638. Pp. 523–525.

(b) The United States marshals two principal arguments in favor of the President's authority to establish binding rules of decision that pre-empt contrary state law. The United States argues that the relevant treaties give the President the authority to implement the *Avena* judgment and that Congress has acquiesced in the exercise of such authority. The United States also relies upon an "independent" international dispute-resolution power. We find these arguments, as well as Medellín's additional argument that the President's Memorandum is a valid exercise of his "Take Care" power, unpersuasive. Pp. 525–532.

(i) The United States maintains that the President's Memorandum is implicitly authorized by the Optional Protocol and the U. N. Charter. But the responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress, not the Executive. *Foster*, 2 Pet., at 315. It is a fundamental constitutional principle that "'[t]he power to make the necessary laws is in Congress; the power to execute in the President.'" *Hamdan* v. *Rumsfeld*, 548 U. S. 557, 591. A non-self-executing treaty, by defini-

tion, is one that was ratified with the understanding that it is not to have domestic effect of its own force. That understanding precludes the assertion that Congress has implicitly authorized the President—acting on his own—to achieve precisely the same result. Accordingly, the President's Memorandum does not fall within the first category of the *Youngstown* framework. Indeed, because the non-self-executing character of the relevant treaties not only refutes the notion that the ratifying parties vested the President with the authority to unilaterally make treaty obligations binding on domestic courts, but also implicitly prohibits him from doing so, the President's assertion of authority is within *Youngstown*'s third category, not the first or even the second.

The United States maintains that congressional acquiescence requires that the President's Memorandum be given effect as domestic law. But such acquiescence is pertinent when the President's action falls within the second *Youngstown* category, not the third. In any event, congressional acquiescence does not exist here. Congress' failure to act following the President's resolution of prior ICJ controversies does not demonstrate acquiescence because in none of those prior controversies did the President assert the authority to transform an international obligation into domestic law and thereby displace state law. The United States' reliance on the President's "related" statutory responsibilities and on his "established role" in litigating foreign policy concerns is also misplaced. The President's statutory authorization to represent the United States before the United Nations, the ICJ, and the U. N. Security Council speaks to his *international* responsibilities, not to any unilateral authority to create domestic law.

The combination of a non-self-executing treaty and the lack of implementing legislation does not preclude the President from acting to comply with an international treaty obligation by other means, so long as those means are consistent with the Constitution. But the President may not rely upon a non-self-executing treaty to establish binding rules of decision that pre-empt contrary state law. Pp. 525–530.

(ii) The United States also claims that—independent of the United States' treaty obligations—the Memorandum is a valid exercise of the President's foreign affairs authority to resolve claims disputes. See, *e. g.*, *American Ins. Assn.* v. *Garamendi*, 539 U. S. 396, 415. This Court's claims-settlement cases involve a narrow set of circumstances: the making of executive agreements to settle civil claims between American citizens and foreign governments or foreign nationals. They are based on the view that "a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned," can "raise a presumption that the [action] had been [taken] in pursuance of its consent." *Dames & Moore* v. *Regan*, 453 U. S. 654,

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686. But "[p]ast practice does not, by itself, create power." *Ibid.* The President's Memorandum—a directive issued to state courts that would compel those courts to reopen final criminal judgments and set aside neutrally applicable state laws—is not supported by a "particularly longstanding practice." The Executive's limited authority to settle international claims disputes pursuant to an executive agreement cannot stretch so far. Pp. 530–532.

(iii) Medellín's argument that the President's Memorandum is a valid exercise of his power to "Take Care" that the laws be faithfully executed, U. S. Const., Art. II, § 3, fails because the ICJ's decision in *Avena* is not domestic law. P. 532.

223 S. W. 3d 315, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment, *post*, p. 533. BREYER, J., filed a dissenting opinion, in which SOUTER and GINSBURG, JJ., joined, *post*, p. 538.

Donald Francis Donovan argued the cause for petitioner. With him on the briefs were *Carl Micarelli* and *Catherine M. Amirfar.*

Solicitor General Clement argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Assistant Attorney General Fisher, Deputy Solicitor General Dreeben, Irving L. Gornstein,* and *Robert J. Erickson.*

R. Ted Cruz, Solicitor General of Texas, argued the cause for respondent. With him on the brief were *Greg Abbott,* Attorney General, *Kent C. Sullivan,* First Assistant Attorney General, *Eric J. R. Nichols,* Deputy Attorney General, *Sean D. Jordan,* Deputy Solicitor General, and *Kristofer S. Monson, Daniel L. Geyser,* and *Adam W. Aston,* Assistant Solicitors General.*

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*Briefs of *amici curiae* urging reversal were filed for the Government of the United Mexican States by *Sandra L. Babcock;* for the American Bar Association by *Karen J. Mathis* and *Jeffrey L. Bleich;* for Foreign Sovereigns by *Asim M. Bhansali, Steven A. Hirsch, Craig Smyser,* and *Jason Luong;* for Former United States Diplomats by *Harold Hongju Koh, Don-*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The International Court of Justice (ICJ), located in the Hague, is a tribunal established pursuant to the United Nations Charter to adjudicate disputes between member states. In the *Case Concerning Avena and Other Mexican Nationals* (*Mex.* v. *U. S.*), 2004 I. C. J. 12 (Judgment of Mar. 31) (*Avena*), that tribunal considered a claim brought by Mexico against the United States. The ICJ held that, based on violations of the Vienna Convention, 51 named Mexican nation-

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ald B. Ayer, Charles R. A. Morse, and *Christian G. Vergonis;* and for Ambassador L. Bruce Laingen et al. by *Daniel C. Malone.*

Briefs of *amici curiae* urging affirmance were filed for the Commonwealth of Virginia et al. by *Robert F. McDonnell,* Attorney General of Virginia, *William E. Thro,* State Solicitor General, *Stephen R. McCullough,* Deputy State Solicitor General, and *William C. Mims,* Chief Deputy Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Troy King* of Alabama, *Talis J. Colberg* of Alaska, *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *Edmund G. Brown, Jr.,* of California, *John W. Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Lawrence Wasden* of Idaho, *Steve Carter* of Indiana, *Paul J. Morrison* of Kansas, *Gregory D. Stumbo* of Kentucky, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Catherine Cortez Masto* of Nevada, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.,* of Pennsylvania, *Roberto J. Sánchez-Ramos* of Puerto Rico, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Robert E. Cooper, Jr.,* of Tennessee, *Mark L. Shurtleff* of Utah, and *Rob McKenna* of Washington; for Constitutional and International Law Scholars by *Ernest A. Young* and *Edward C. Dawson;* for Former Senior Officials of the Department of Justice by *Charles J. Cooper* and *Brian Stuart Koukoutchos;* for the Washington Legal Foundation et al. by *Daniel J. Popeo* and *Richard A. Samp;* and for Randy and Sandra Ertman et al. by *Kent S. Scheidegger.*

Briefs of *amici curiae* were filed for the European Union et al. by *S. Adele Shank* and *John B. Quigley;* for EarthRights International by *Judith Brown Chomsky;* for International Court of Justice Experts by *Lori Fisler Damrosch* and *Charles Owen Verrill, Jr.;* and for the Mountain States Legal Foundation by *William Perry Pendley.*

als were entitled to review and reconsideration of their state-court convictions and sentences in the United States. This was so regardless of any forfeiture of the right to raise Vienna Convention claims because of a failure to comply with generally applicable state rules governing challenges to criminal convictions.

In *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331 (2006)—issued after *Avena* but involving individuals who were not named in the *Avena* judgment—we held that, contrary to the ICJ's determination, the Vienna Convention did not preclude the application of state default rules. After the *Avena* decision, President George W. Bush determined, through a Memorandum for the Attorney General (Feb. 28, 2005), App. to Pet. for Cert. 187a (Memorandum or President's Memorandum), that the United States would "discharge its international obligations" under *Avena* "by having State courts give effect to the decision."

Petitioner José Ernesto Medellín, who had been convicted and sentenced in Texas state court for murder, is one of the 51 Mexican nationals named in the *Avena* decision. Relying on the ICJ's decision and the President's Memorandum, Medellín filed an application for a writ of habeas corpus in state court. The Texas Court of Criminal Appeals dismissed Medellín's application as an abuse of the writ under state law, given Medellín's failure to raise his Vienna Convention claim in a timely manner under state law. We granted certiorari to decide two questions. *First*, is the ICJ's judgment in *Avena* directly enforceable as domestic law in a state court in the United States? *Second*, does the President's Memorandum independently require the States to provide review and reconsideration of the claims of the 51 Mexican nationals named in *Avena* without regard to state procedural default rules? We conclude that neither *Avena* nor the President's Memorandum constitutes directly enforceable federal law that pre-empts state limitations on the

filing of successive habeas petitions. We therefore affirm the decision below.

I

A

In 1969, the United States, upon the advice and consent of the Senate, ratified the Vienna Convention on Consular Relations (Vienna Convention or Convention), Apr. 24, 1963, [1970] 21 U. S. T. 77, T. I. A. S. No. 6820, and the Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention (Optional Protocol or Protocol), Apr. 24, 1963, [1970] 21 U. S. T. 325, T. I. A. S. No. 6820. The preamble to the Convention provides that its purpose is to "contribute to the development of friendly relations among nations." 21 U. S. T., at 79; *Sanchez-Llamas*, *supra*, at 337. Toward that end, Article 36 of the Convention was drafted to "facilitat[e] the exercise of consular functions." Art. 36(1), 21 U. S. T., at 100. It provides that if a person detained by a foreign country "so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State" of such detention, and "inform the [detainee] of his righ[t]" to request assistance from the consul of his own state. Art. 36(1)(b), *id.*, at 101.

The Optional Protocol provides a venue for the resolution of disputes arising out of the interpretation or application of the Vienna Convention. Art. I, 21 U. S. T., at 326. Under the Protocol, such disputes "shall lie within the compulsory jurisdiction of the International Court of Justice" and "may accordingly be brought before the [ICJ] . . . by any party to the dispute being a Party to the present Protocol." *Ibid.*

The ICJ is "the principal judicial organ of the United Nations." United Nations Charter, Art. 92, 59 Stat. 1051, T. S. No. 993 (1945). It was established in 1945 pursuant to the United Nations Charter. The ICJ Statute—annexed to the

U. N. Charter—provides the organizational framework and governing procedures for cases brought before the ICJ. Statute of the International Court of Justice (ICJ Statute), 59 Stat. 1055, T. S. No. 993 (1945).

Under Article 94(1) of the U. N. Charter, "[e]ach Member of the United Nations undertakes to comply with the decision of the [ICJ] in any case to which it is a party." 59 Stat. 1051. The ICJ's jurisdiction in any particular case, however, is dependent upon the consent of the parties. See Art. 36, *id.*, at 1060. The ICJ Statute delineates two ways in which a nation may consent to ICJ jurisdiction: It may consent generally to jurisdiction on any question arising under a treaty or general international law, Art. 36(2), *ibid.*, or it may consent specifically to jurisdiction over a particular category of cases or disputes pursuant to a separate treaty, Art. 36(1), *ibid.* The United States originally consented to the general jurisdiction of the ICJ when it filed a declaration recognizing compulsory jurisdiction under Art. 36(2) in 1946. The United States withdrew from general ICJ jurisdiction in 1985. See U. S. Dept. of State Letter and Statement Concerning Termination of Acceptance of ICJ Compulsory Jurisdiction (Oct. 7, 1985), reprinted in 24 I. L. M. 1742 (1985). By ratifying the Optional Protocol to the Vienna Convention, the United States consented to the specific jurisdiction of the ICJ with respect to claims arising out of the Vienna Convention. On March 7, 2005, subsequent to the ICJ's judgment in *Avena*, the United States gave notice of withdrawal from the Optional Protocol to the Vienna Convention. Letter from Condoleezza Rice, Secretary of State, to Kofi A. Annan, Secretary-General of the United Nations.

B

Petitioner José Ernesto Medellín, a Mexican national, has lived in the United States since preschool. A member of the

"Black and Whites" gang, Medellín was convicted of capital murder and sentenced to death in Texas for the gang rape and brutal murders of two Houston teenagers.

On June 24, 1993, 14-year-old Jennifer Ertman and 16-year-old Elizabeth Pena were walking home when they encountered Medellín and several fellow gang members. Medellín attempted to engage Elizabeth in conversation. When she tried to run, petitioner threw her to the ground. Jennifer was grabbed by other gang members when she, in response to her friend's cries, ran back to help. The gang members raped both girls for over an hour. Then, to prevent their victims from identifying them, Medellín and his fellow gang members murdered the girls and discarded their bodies in a wooded area. Medellín was personally responsible for strangling at least one of the girls with her own shoelace.

Medellín was arrested at approximately 4 a.m. on June 29, 1993. A few hours later, between 5:54 and 7:23 a.m., Medellín was given *Miranda* warnings; he then signed a written waiver and gave a detailed written confession. App. to Brief for Respondent 32–36. Local law enforcement officers did not, however, inform Medellín of his Vienna Convention right to notify the Mexican consulate of his detention. Brief for Petitioner 6–7. Medellín was convicted of capital murder and sentenced to death; his conviction and sentence were affirmed on appeal. *Medellín* v. *State*, No. 71,997 (Tex. Crim. App., May 16, 1997), App. to Brief for Respondent 2–31.

Medellín first raised his Vienna Convention claim in his first application for state postconviction relief. The state trial court held that the claim was procedurally defaulted because Medellín had failed to raise it at trial or on direct review. The trial court also rejected the Vienna Convention claim on the merits, finding that Medellín had "fail[ed] to show that any non-notification of the Mexican authorities im-

pacted on the validity of his conviction or punishment." *Id.*, at 62.[1] The Texas Court of Criminal Appeals affirmed. *Id.*, at 64–65.

Medellín then filed a habeas petition in Federal District Court. The District Court denied relief, holding that Medellín's Vienna Convention claim was procedurally defaulted and that Medellín had failed to show prejudice arising from the Vienna Convention violation. See *Medellín* v. *Cockrell*, Civ. Action No. H–01–4078 (SD Tex., June 26, 2003), App. to Brief for Respondent 66, 86–92.

While Medellín's application for a certificate of appealability was pending in the Fifth Circuit, the ICJ issued its decision in *Avena*. The ICJ held that the United States had violated Article 36(1)(b) of the Vienna Convention by failing to inform the 51 named Mexican nationals, including Medellín, of their Vienna Convention rights. 2004 I. C. J., at 53–55. In the ICJ's determination, the United States was obligated "to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the

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[1] The requirement of Article 36(1)(b) of the Vienna Convention that the detaining state notify the detainee's consulate "without delay" is satisfied, according to the ICJ, where notice is provided within three working days. *Avena*, 2004 I. C. J. 12, 52, ¶97 (Judgment of Mar. 31). See *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331, 362 (2006) (GINSBURG, J., concurring in judgment). Here, Medellín confessed within three hours of his arrest—before there could be a violation of his Vienna Convention right to consulate notification. App. to Brief for Respondent 32–36. In a second state habeas application, Medellín sought to expand his claim of prejudice by contending that the State's noncompliance with the Vienna Convention deprived him of assistance in developing mitigation evidence during the capital phase of his trial. This argument, however, was likely waived: Medellín had the assistance of consulate counsel during the preparation of his *first* application for state postconviction relief, yet failed to raise this argument at that time. See Application for Writ of Habeas Corpus in *Ex parte Medellín*, No. 675430–A (Tex. Crim. App., Mar. 26, 1998), pp. 25–31. In light of our disposition of this case, we need not consider whether Medellín was prejudiced in any way by the violation of his Vienna Convention rights.

[affected] Mexican nationals." *Id.*, at 72, ¶ 153(9). The ICJ indicated that such review was required without regard to state procedural default rules. *Id.*, at 56–57.

The Fifth Circuit denied a certificate of appealability. *Medellín* v. *Dretke*, 371 F. 3d 270, 281 (2004). The court concluded that the Vienna Convention did not confer individually enforceable rights. *Id.*, at 280. The court further ruled that it was in any event bound by this Court's decision in *Breard* v. *Greene*, 523 U. S. 371, 375 (1998) (*per curiam*), which held that Vienna Convention claims are subject to procedural default rules, rather than by the ICJ's contrary decision in *Avena*. 371 F. 3d, at 280.

This Court granted certiorari. *Medellín* v. *Dretke*, 544 U. S. 660, 661 (2005) (*per curiam*) (*Medellín I*). Before we heard oral argument, however, President George W. Bush issued his Memorandum for the United States Attorney General, providing:

> "I have determined, pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, that the United States will discharge its international obligations under the decision of the International Court of Justice in [*Avena*], by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision." App. to Pet. for Cert. 187a.

Medellín, relying on the President's Memorandum and the ICJ's decision in *Avena*, filed a second application for habeas relief in state court. *Ex parte Medellín*, 223 S. W. 3d 315, 322–323 (Tex. Crim. App. 2006). Because the state-court proceedings might have provided Medellín with the review and reconsideration he requested, and because his claim for federal relief might otherwise have been barred, we dismissed his petition for certiorari as improvidently granted. *Medellín I*, *supra*, at 664.

The Texas Court of Criminal Appeals subsequently dismissed Medellín's second state habeas application as an abuse of the writ. 223 S. W. 3d, at 352. In the court's view, neither the *Avena* decision nor the President's Memorandum was "binding federal law" that could displace the State's limitations on the filing of successive habeas applications. 223 S. W. 3d, at 352. We again granted certiorari. 550 U. S. 917 (2007).

II

Medellín first contends that the ICJ's judgment in *Avena* constitutes a "binding" obligation on the state and federal courts of the United States. He argues that "by virtue of the Supremacy Clause, the treaties requiring compliance with the *Avena* judgment are *already* the 'Law of the Land' by which all state and federal courts in this country are 'bound.'" Reply Brief for Petitioner 1. Accordingly, Medellín argues, *Avena* is a binding federal rule of decision that pre-empts contrary state limitations on successive habeas petitions.

No one disputes that the *Avena* decision—a decision that flows from the treaties through which the United States submitted to ICJ jurisdiction with respect to Vienna Convention disputes—constitutes an *international* law obligation on the part of the United States. But not all international law obligations automatically constitute binding federal law enforceable in United States courts. The question we confront here is whether the *Avena* judgment has automatic *domestic* legal effect such that the judgment of its own force applies in state and federal courts.

This Court has long recognized the distinction between treaties that automatically have effect as domestic law, and those that—while they constitute international law commitments—do not by themselves function as binding federal law. The distinction was well explained by Chief Justice Marshall's opinion in *Foster* v. *Neilson*, 2 Pet. 253, 315 (1829),

overruled on other grounds, *United States* v. *Percheman*, 7 Pet. 51 (1833), which held that a treaty is "equivalent to an act of the legislature," and hence self-executing, when it "operates of itself without the aid of any legislative provision." *Foster*, *supra*, at 314. When, in contrast, "[treaty] stipulations are not self-executing they can only be enforced pursuant to legislation to carry them into effect." *Whitney* v. *Robertson*, 124 U. S. 190, 194 (1888). In sum, while treaties "may comprise international commitments . . . they are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be 'self-executing' and is ratified on these terms." *Igartúa-De La Rosa* v. *United States*, 417 F. 3d 145, 150 (CA1 2005) (en banc) (Boudin, C. J.).[2]

A treaty is, of course, "primarily a compact between independent nations." *Head Money Cases*, 112 U. S. 580, 598 (1884). It ordinarily "depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it." *Ibid.*; see also The Federalist No. 33, p. 207 (J. Cooke ed. 1961) (A. Hamilton) (comparing laws that individuals are "bound to observe" as "the *supreme law* of the land" with "a mere treaty, dependent on the good faith of the parties"). "If these [interests] fail, its infraction becomes the subject of international negotiations and reclamations . . . . It is obvious that with all this the judicial courts have nothing to do and can give no redress." *Head Money Cases*, *supra*, at 598. Only "[i]f the treaty contains stipulations which are self-executing, that is, require no legislation to make them operative, [will] they have the force

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[2] The label "self-executing" has on occasion been used to convey different meanings. What we mean by "self-executing" is that the treaty has automatic domestic effect as federal law upon ratification. Conversely, a "non-self-executing" treaty does not by itself give rise to domestically enforceable federal law. Whether such a treaty has domestic effect depends upon implementing legislation passed by Congress.

and effect of a legislative enactment." *Whitney*, *supra*, at 194.[3]

Medellín and his *amici* nonetheless contend that the Optional Protocol, U. N. Charter, and ICJ Statute supply the "relevant obligation" to give the *Avena* judgment binding effect in the domestic courts of the United States. Reply Brief for Petitioner 5–6.[4] Because none of these treaty sources creates binding federal law in the absence of implementing legislation, and because it is uncontested that no such legislation exists, we conclude that the *Avena* judgment is not automatically binding domestic law.

A

The interpretation of a treaty, like the interpretation of a statute, begins with its text. *Air France* v. *Saks*, 470

[3] Even when treaties are self-executing in the sense that they create federal law, the background presumption is that "[i]nternational agreements, even those directly benefiting private persons, generally do not create private rights or provide for a private cause of action in domestic courts." 2 Restatement (Third) of Foreign Relations Law of the United States §907, Comment *a*, p. 395 (1986) (hereinafter Restatement). Accordingly, a number of the Courts of Appeals have presumed that treaties do not create privately enforceable rights in the absence of express language to the contrary. See, *e. g.*, *United States* v. *Emuegbunam*, 268 F. 3d 377, 389 (CA6 2001); *United States* v. *Jimenez-Nava*, 243 F. 3d 192, 195 (CA5 2001); *United States* v. *Li*, 206 F. 3d 56, 60–61 (CA1 2000) (en banc); *Goldstar (Panama) S. A.* v. *United States*, 967 F. 2d 965, 968 (CA4 1992); *Canadian Transp. Co.* v. *United States*, 663 F. 2d 1081, 1092 (CADC 1980); *Mannington Mills, Inc.* v. *Congoleum Corp.*, 595 F. 2d 1287, 1298 (CA3 1979).

[4] The question is whether the *Avena* judgment has binding effect in domestic courts under the Optional Protocol, ICJ Statute, and U. N. Charter. Consequently, it is unnecessary to resolve whether the Vienna Convention is itself "self-executing" or whether it grants Medellín individually enforceable rights. See Reply Brief for Petitioner 5 (disclaiming reliance on the Vienna Convention). As in *Sanchez-Llamas*, 548 U. S., at 342–343, we thus assume, without deciding, that Article 36 grants foreign nationals "an individually enforceable right to request that their consular officers be notified of their detention, and an accompanying right to be informed by authorities of the availability of consular notification."

U. S. 392, 396–397 (1985). Because a treaty ratified by the United States is "an agreement among sovereign powers," we have also considered as "aids to its interpretation" the negotiation and drafting history of the treaty as well as "the postratification understanding" of signatory nations. *Zicherman* v. *Korean Air Lines Co.*, 516 U. S. 217, 226 (1996); see also *United States* v. *Stuart*, 489 U. S. 353, 365–366 (1989); *Choctaw Nation* v. *United States*, 318 U. S. 423, 431–432 (1943).

As a signatory to the Optional Protocol, the United States agreed to submit disputes arising out of the Vienna Convention to the ICJ. The Protocol provides: "Disputes arising out of the interpretation or application of the [Vienna] Convention shall lie within the compulsory jurisdiction of the International Court of Justice." Art. I, 21 U. S. T., at 326. Of course, submitting to jurisdiction and agreeing to be bound are two different things. A party could, for example, agree to compulsory nonbinding arbitration. Such an agreement would require the party to appear before the arbitral tribunal without obligating the party to treat the tribunal's decision as binding. See, *e. g.*, North American Free Trade Agreement, U. S.-Can.-Mex., Art. 2018(1), Dec. 17, 1992, 32 I. L. M. 605, 697 (1993) ("On receipt of the final report of [the arbitral panel requested by a Party to the agreement], the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel").

The most natural reading of the Optional Protocol is as a bare grant of jurisdiction. It provides only that "[d]isputes arising out of the interpretation or application of the [Vienna] Convention shall lie within the compulsory jurisdiction of the International Court of Justice" and "may accordingly be brought before the [ICJ] . . . by any party to the dispute being a Party to the present Protocol." Art. I, 21 U. S. T., at 326. The Protocol says nothing about the effect of an ICJ decision and does not itself commit signatories to

comply with an ICJ judgment. The Protocol is similarly silent as to any enforcement mechanism.

The obligation on the part of signatory nations to comply with ICJ judgments derives not from the Optional Protocol, but rather from Article 94 of the U. N. Charter—the provision that specifically addresses the effect of ICJ decisions. Article 94(1) provides that "[e]ach Member of the United Nations *undertakes to comply* with the decision of the [ICJ] in any case to which it is a party." 59 Stat. 1051 (emphasis added). The Executive Branch contends that the phrase "undertakes to comply" is not "an acknowledgement that an ICJ decision will have immediate legal effect in the courts of U. N. members," but rather "a *commitment* on the part of U. N. members to take *future* action through their political branches to comply with an ICJ decision." Brief for United States as *Amicus Curiae* in *Medellín I*, O. T. 2004, No. 04–5928, p. 34.

We agree with this construction of Article 94. The Article is not a directive to domestic courts. It does not provide that the United States "shall" or "must" comply with an ICJ decision, nor indicate that the Senate that ratified the U. N. Charter intended to vest ICJ decisions with immediate legal effect in domestic courts. Instead, "[t]he words of Article 94 . . . call upon governments to take certain action." *Committee of United States Citizens Living in Nicaragua* v. *Reagan*, 859 F. 2d 929, 938 (CADC 1988) (quoting *Diggs* v. *Richardson*, 555 F. 2d 848, 851 (CADC 1976); internal quotation marks omitted). See also *Foster*, 2 Pet., at 314, 315 (holding a treaty non-self-executing because its text—"'all . . . grants of land . . . shall be ratified and confirmed'"—did not "act directly on the grants" but rather "pledge[d] the faith of the United States to pass acts which shall ratify and confirm them"). In other words, the U. N. Charter reads like "a compact between independent nations" that "depends for the enforcement of its provisions on the interest and the

honor of the governments which are parties to it." *Head Money Cases*, 112 U. S., at 598.[5]

The remainder of Article 94 confirms that the U. N. Charter does not contemplate the automatic enforceability of ICJ decisions in domestic courts.[6] Article 94(2)—the enforcement provision—provides the sole remedy for noncompliance: referral to the United Nations Security Council by an aggrieved state. 59 Stat. 1051.

The U. N. Charter's provision of an express diplomatic—that is, nonjudicial—remedy is itself evidence that ICJ judgments were not meant to be enforceable in domestic courts. See *Sanchez-Llamas*, 548 U. S., at 347. And even this "quintessentially *international* remed[y]," *id.*, at 355, is not absolute. First, the Security Council must "dee[m] necessary" the issuance of a recommendation or measure to effectuate the judgment. Art. 94(2), 59 Stat. 1051. Second, as the President and Senate were undoubtedly aware in subscribing to the U. N. Charter and Optional Protocol, the

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[5] We do not read "undertakes" to mean that "'"[t]he United States . . . shall be at liberty to make respecting th[e] matter, such laws as they think proper."'" *Post*, at 554 (BREYER, J., dissenting) (quoting *Todok* v. *Union State Bank of Harvard*, 281 U. S. 449, 453, 454 (1930) (holding that a treaty with Norway did *not* "operat[e] to override the law of [Nebraska] as to the disposition of homestead property")). Whether or not the United States "undertakes" to comply with a treaty says nothing about what laws it may enact. The United States is *always* "at liberty to make . . . such laws as [it] think[s] proper." *Id.*, at 453. Indeed, a later-in-time federal statute supersedes inconsistent treaty provisions. See, *e. g.*, *Cook* v. *United States*, 288 U. S. 102, 119–120 (1933). Rather, the "undertakes to comply" language confirms that further action to give effect to an ICJ judgment was contemplated, contrary to the dissent's position that such judgments constitute directly enforceable federal law, without more. See also *post*, at 533–535 (STEVENS, J., concurring in judgment).

[6] Article 94(2) provides in full: "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment." 59 Stat. 1051.

United States retained the unqualified right to exercise its veto of any Security Council resolution.

This was the understanding of the Executive Branch when the President agreed to the U. N. Charter and the declaration accepting general compulsory ICJ jurisdiction. See, *e. g.*, The Charter of the United Nations for the Maintenance of International Peace and Security: Hearings before the Senate Committee on Foreign Relations, 79th Cong., 1st Sess., 124–125 (1945) ("[I]f a state fails to perform its obligations under a judgment of the [ICJ], the other party may have recourse to the Security Council"); *id.*, at 286 (statement of Leo Pasvolsky, Special Assistant to the Secretary of State for International Organizations and Security Affairs) ("[W]hen the Court has rendered a judgment and one of the parties refuses to accept it, then the dispute becomes political rather than legal. It is as a political dispute that the matter is referred to the Security Council"); A Resolution Proposing Acceptance of Compulsory Jurisdiction of International Court of Justice: Hearings on S. Res. 196 before the Subcommittee of the Senate Committee on Foreign Relations, 79th Cong., 2d Sess., 142 (1946) (statement of Charles Fahy, State Dept. Legal Adviser) (while parties that accept ICJ jurisdiction have "a moral obligation" to comply with ICJ decisions, Article 94(2) provides the exclusive means of enforcement).

If ICJ judgments were instead regarded as automatically enforceable domestic law, they would be immediately and directly binding on state and federal courts pursuant to the Supremacy Clause. Mexico or the ICJ would have no need to proceed to the Security Council to enforce the judgment in this case. Noncompliance with an ICJ judgment through exercise of the Security Council veto—always regarded as an option by the Executive and ratifying Senate during and after consideration of the U. N. Charter, Optional Protocol, and ICJ Statute—would no longer be a viable alternative.

There would be nothing to veto. In light of the U. N. Charter's remedial scheme, there is no reason to believe that the President and Senate signed up for such a result.

In sum, Medellín's view that ICJ decisions are automatically enforceable as domestic law is fatally undermined by the enforcement structure established by Article 94. His construction would eliminate the option of noncompliance contemplated by Article 94(2), undermining the ability of the political branches to determine whether and how to comply with an ICJ judgment. Those sensitive foreign policy decisions would instead be transferred to state and federal courts charged with applying an ICJ judgment directly as domestic law. And those courts would not be empowered to decide whether to comply with the judgment—again, always regarded as an option by the political branches—any more than courts may consider whether to comply with any other species of domestic law. This result would be particularly anomalous in light of the principle that "[t]he conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—'the political'—Departments." *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 302 (1918).

The ICJ Statute, incorporated into the U. N. Charter, provides further evidence that the ICJ's judgment in *Avena* does not automatically constitute federal law judicially enforceable in United States courts. Art. 59, 59 Stat. 1062. To begin with, the ICJ's "principal purpose" is said to be to "arbitrate particular disputes between national governments." *Sanchez-Llamas*, *supra*, at 355 (citing 59 Stat. 1055). Accordingly, the ICJ can hear disputes only between nations, not individuals. Art. 34(1), *id.*, at 1059 ("Only states [*i. e.*, countries] may be parties in cases before the [ICJ]"). More important, Article 59 of the statute provides that "[t]he decision of the [ICJ] has *no binding force* except between the parties and in respect of that particular case."

Id., at 1062 (emphasis added).[7] The dissent does not explain how Medellín, an individual, can be a party to the ICJ proceeding.

Medellín argues that because the *Avena* case involves him, it is clear that he—and the 50 other Mexican nationals named in the *Avena* decision—should be regarded as parties to the *Avena* judgment. Brief for Petitioner 21–22. But cases before the ICJ are often precipitated by disputes involving particular persons or entities, disputes that a nation elects to take up as its own. See, *e. g.*, *Case Concerning the Barcelona Traction, Light & Power Co.* (*Belg.* v. *Spain*), 1970 I. C. J. 3 (Judgment of Feb. 5) (claim brought by Belgium on behalf of Belgian nationals and shareholders); *Case Concerning the Protection of French Nationals and Protected Persons in Egypt* (*Fr.* v. *Egypt*), 1950 I. C. J. 59 (Order of Mar. 29) (claim brought by France on behalf of French nationals and protected persons in Egypt); *Anglo-Iranian Oil Co. Case* (*U. K.* v. *Iran*), 1952 I. C. J. 93, 112 (Judgment of July 22) (claim brought by the United Kingdom on behalf of the Anglo-Iranian Oil Company). That has never been understood to alter the express and established rules that only nation-states may be parties before the ICJ, Art. 34, 59 Stat. 1059, and—contrary to the position of the dissent, *post*, at 559—that ICJ judgments are binding only between those parties, Art. 59, 59 Stat. 1062.[8]

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[7] Medellín alters this language in his brief to provide that the ICJ Statute makes the *Avena* judgment binding "in respect of [his] particular case." Brief for Petitioner 22 (internal quotation marks omitted). Medellín does not and cannot have a case before the ICJ under the terms of the ICJ Statute.

[8] The dissent concludes that the ICJ judgment is binding federal law based in large part on its belief that the Vienna Convention overrides contrary state procedural rules. See *post*, at 555–557, 559. But not even Medellín relies on the Convention. See Reply Brief for Petitioner 5 (disclaiming reliance). For good reason: Such reliance is foreclosed by the decision of this Court in *Sanchez-Llamas*, 548 U. S., at 351 (holding that

It is, moreover, well settled that the United States' interpretation of a treaty "is entitled to great weight." *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U. S. 176, 184–185 (1982); see also *El Al Israel Airlines, Ltd.* v. *Tsui Yuan Tseng*, 525 U. S. 155, 168 (1999). The Executive Branch has unfailingly adhered to its view that the relevant treaties do not create domestically enforceable federal law. See Brief for United States as *Amicus Curiae* 4, 27–29.[9]

The pertinent international agreements, therefore, do not provide for implementation of ICJ judgments through direct enforcement in domestic courts, and "where a treaty does not provide a particular remedy, either expressly or implicitly, it

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the Convention does not preclude the application of state procedural bars); see also *id.*, at 363 (GINSBURG, J., concurring in judgment). There is no basis for relitigating the issue. Further, to rely on the Convention would elide the distinction between a treaty—negotiated by the President and signed by Congress—and a judgment rendered pursuant to those treaties.

[9] In interpreting our treaty obligations, we also consider the views of the ICJ itself, "giv[ing] respectful consideration to the interpretation of an international treaty rendered by an international court with jurisdiction to interpret [the treaty]." *Breard* v. *Greene*, 523 U. S. 371, 375 (1998) (*per curiam*); see *Sanchez-Llamas*, *supra*, at 355–356. It is not clear whether that principle would apply when the question is the binding force of ICJ judgments themselves, rather than the substantive scope of a treaty the ICJ must interpret in resolving disputes. Cf. *Phillips Petroleum Co.* v. *Shutts*, 472 U. S. 797, 805 (1985) ("[A] court adjudicating a dispute may not be able to predetermine the res judicata effect of its own judgment"); 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4405, p. 82 (2d ed. 2002) ("The first court does not get to dictate to other courts the preclusion consequences of its own judgment"). In any event, nothing suggests that the ICJ views its judgments as automatically enforceable in the domestic courts of signatory nations. The *Avena* judgment itself directs the United States to provide review and reconsideration of the affected convictions and sentences "*by means of its own choosing.*" 2004 I. C. J., at 72, ¶ 153(9) (emphasis added). This language, as well as the ICJ's mere suggestion that the "judicial process" is best suited to provide such review, *id.*, at 65–66, confirm that domestic enforceability in court is not part and parcel of an ICJ judgment.

is not for the federal courts to impose one on the States through lawmaking of their own." *Sanchez-Llamas*, 548 U. S., at 347.

B

The dissent faults our analysis because it "looks for the wrong thing (explicit textual expression about self-execution) using the wrong standard (clarity) in the wrong place (the treaty language)." *Post*, at 562. Given our obligation to interpret treaty provisions to determine whether they are self-executing, we have to confess that we do think it rather important to look to the treaty language to see what it has to say about the issue. That is after all what the Senate looks to in deciding whether to approve the treaty.

The interpretive approach employed by the Court today—resorting to the text—is hardly novel. In two early cases involving an 1819 land-grant treaty between Spain and the United States, Chief Justice Marshall found the language of the treaty dispositive. In *Foster*, after distinguishing between self-executing treaties (those "equivalent to an act of the legislature") and non-self-executing treaties (those "the legislature must execute"), Chief Justice Marshall held that the 1819 treaty was non-self-executing. 2 Pet., at 314. Four years later, the Supreme Court considered another claim under the same treaty, but concluded that the treaty was self-executing. See *Percheman*, 7 Pet., at 87. The reason was not because the treaty was sometimes self-executing and sometimes not, but because "the language of" the Spanish translation (brought to the Court's attention for the first time) indicated the parties' intent to ratify and confirm the land grant "by force of the instrument itself." *Id.*, at 89.

As against this time-honored textual approach, the dissent proposes a multifactor, judgment-by-judgment analysis that would "jettiso[n] relative predictability for the open-ended rough-and-tumble of factors." *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U. S. 527, 547 (1995).

The dissent's novel approach to deciding which (or, more accurately, when) treaties give rise to directly enforceable federal law is arrestingly indeterminate. Treaty language is barely probative. *Post*, at 549 ("[T]he absence or presence of language in a treaty about a provision's self-execution proves nothing at all"). Determining whether treaties themselves create federal law is sometimes committed to the political branches and sometimes to the judiciary. *Post*, at 549–550. Of those committed to the judiciary, the courts pick and choose which shall be binding United States law—trumping not only state but other federal law as well—and which shall not. *Post*, at 550–562. They do this on the basis of a multifactor, "context-specific" inquiry. *Post*, at 549. Even then, the same treaty sometimes gives rise to United States law and sometimes does not, again depending on an ad hoc judicial assessment. *Post*, at 550–562.

Our Framers established a careful set of procedures that must be followed before federal law can be created under the Constitution—vesting that decision in the political branches, subject to checks and balances. U. S. Const., Art. I, §7. They also recognized that treaties could create federal law, but again through the political branches, with the President making the treaty and the Senate approving it. Art. II, §2. The dissent's understanding of the treaty route, depending on an ad hoc judgment of the judiciary without looking to the treaty language—the very language negotiated by the President and approved by the Senate—cannot readily be ascribed to those same Framers.

The dissent's approach risks the United States' involvement in international agreements. It is hard to believe that the United States would enter into treaties that are sometimes enforceable and sometimes not. Such a treaty would be the equivalent of writing a blank check to the judiciary. Senators could never be quite sure what the treaties on which they were voting meant. Only a judge could say for sure and only at some future date. This uncertainty could

hobble the United States' efforts to negotiate and sign international agreements.

In this case, the dissent—for a grab bag of no less than seven reasons—would tell us that this *particular* ICJ judgment is federal law. *Post*, at 549–562. That is no sort of guidance. Nor is it any answer to say that the federal courts will diligently police international agreements and enforce the decisions of international tribunals only when they *should be* enforced. *Ibid.* The point of a non-self-executing treaty is that it "addresses itself to the political, *not* the judicial department; and the legislature must execute the contract before it can become a rule for the Court." *Foster*, *supra*, at 314 (emphasis added); *Whitney*, 124 U. S., at 195. See also *Foster*, *supra*, at 307 ("The judiciary is not that department of the government, to which the assertion of its interests against foreign powers is confided"). The dissent's contrary approach would assign to the courts—not the political branches—the primary role in deciding when and how international agreements will be enforced. To read a treaty so that it sometimes has the effect of domestic law and sometimes does not is tantamount to vesting with the judiciary the power not only to interpret but also to create the law.

C

Our conclusion that *Avena* does not by itself constitute binding federal law is confirmed by the "postratification understanding" of signatory nations. See *Zicherman*, 516 U. S., at 226. There are currently 47 nations that are parties to the Optional Protocol and 171 nations that are parties to the Vienna Convention. Yet neither Medellín nor his *amici* have identified a single nation that treats ICJ judgments as binding in domestic courts.[10] In determining that the

[10]The best that the ICJ experts as *amici curiae* can come up with is the contention that local Moroccan courts have referred to ICJ judgments as "dispositive." Brief for ICJ Experts as *Amici Curiae* 20, n. 31. Even the ICJ experts do not cite a case so holding, and Moroccan practice is at

Vienna Convention did not require certain relief in United States courts in *Sanchez-Llamas*, we found it pertinent that the requested relief would not be available under the treaty in any other signatory country. See 548 U. S., at 343–344, and n. 3. So too here the lack of any basis for supposing that any other country would treat ICJ judgments as directly enforceable as a matter of its domestic law strongly suggests that the treaty should not be so viewed in our courts.

Our conclusion is further supported by general principles of interpretation. To begin with, we reiterated in *Sanchez-Llamas* what we held in *Breard*, that "'absent a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State.'" 548 U. S., at 351 (quoting *Breard*, 523 U. S., at 375). Given that ICJ judgments may interfere with state procedural rules, one would expect the ratifying parties to the relevant treaties to have clearly stated their intent to give those judgments domestic effect, if they had so intended. Here there is no statement in the Optional Protocol, the U. N. Charter, or the ICJ Statute that supports the notion that ICJ judgments displace state procedural rules.

Moreover, the consequences of Medellín's argument give pause. An ICJ judgment, the argument goes, is not only binding domestic law but is also unassailable. As a result, neither Texas nor this Court may look behind a judgment and quarrel with its reasoning or result. (We already know, from *Sanchez-Llamas*, that this Court disagrees with both

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best inconsistent, for at least one local Moroccan court has held that ICJ judgments are not binding as a matter of municipal law. See, *e. g.*, *Mackay Radio & Tel. Co.* v. *Lal-La Fatma Bent si Mohamed el Khadar*, [1954] 21 Int'l L. Rep. 136 (Tangier, Ct. App. Int'l Trib.) (holding that ICJ decisions are not binding on Morocco's domestic courts); see also "*Socobel*" v. *Greek State*, [1951] 18 Int'l L. Rep. 3 (Belg., Trib. Civ. de Bruxelles) (holding that judgments of the ICJ's predecessor, the Permanent Court of International Justice, were not domestically enforceable).

the reasoning and result in *Avena*.) Medellín's interpretation would allow ICJ judgments to override otherwise binding state law; there is nothing in his logic that would exempt contrary federal law from the same fate. See, *e. g.*, *Cook* v. *United States*, 288 U. S. 102, 119 (1933) (later-in-time self-executing treaty supersedes a federal statute if there is a conflict). And there is nothing to prevent the ICJ from ordering state courts to annul criminal convictions and sentences, for any reason deemed sufficient by the ICJ. Indeed, that is precisely the relief Mexico requested. *Avena*, 2004 I. C. J., at 58–59.

Even the dissent flinches at reading the relevant treaties to give rise to self-executing ICJ judgments in all cases. It admits that "Congress is unlikely to authorize automatic judicial enforceability of *all* ICJ judgments, for that could include some politically sensitive judgments and others better suited for enforcement by other branches." *Post*, at 560. Our point precisely. But the lesson to draw from that insight is hardly that the judiciary should decide which judgments are politically sensitive and which are not.

In short, and as we observed in *Sanchez-Llamas*, "[n]othing in the structure or purpose of the ICJ suggests that its interpretations were intended to be conclusive on our courts." 548 U. S., at 354. Given that holding, it is difficult to see how that same structure and purpose can establish, as Medellín argues, that *judgments* of the ICJ nonetheless were intended to be conclusive on our courts. A judgment is binding only if there is a rule of law that makes it so. And the question whether ICJ judgments can bind domestic courts depends upon the same analysis undertaken in *Sanchez-Llamas* and set forth above.

Our prior decisions identified by the dissent as holding a number of treaties to be self-executing, see *post*, at 545–546, and Appendix A, stand only for the unremarkable proposition that some international agreements are self-executing and others are not. It is well settled that the "[i]nterpreta-

tion of [a treaty] . . . must, of course, begin with the language of the Treaty itself." *Sumitomo Shoji America, Inc.*, 457 U. S., at 180. As a result, we have held treaties to be self-executing when the textual provisions indicate that the President and Senate intended for the agreement to have domestic effect.

Medellín and the dissent cite *Comegys* v. *Vasse*, 1 Pet. 193 (1828), for the proposition that the judgments of international tribunals are automatically binding on domestic courts. See *post*, at 546; Reply Brief for Petitioner 2; Brief for Petitioner 19–20. That case, of course, involved a different treaty than the ones at issue here; it stands only for the modest principle that the terms of a treaty control the outcome of a case.[11] We do not suggest that treaties can never afford binding domestic effect to international tribunal judgments—only that the U. N. Charter, the Optional Protocol, and the ICJ Statute do not do so. And whether the treaties underlying a judgment are self-executing so that the judgment is directly enforceable as domestic law in our courts is, of course, a matter for this Court to decide. See *Sanchez-Llamas*, *supra*, at 353–354.

D

Our holding does not call into question the ordinary enforcement of foreign judgments or international arbitral

[11] The other case Medellín cites for the proposition that the judgments of international courts are binding, *La Abra Silver Mining Co.* v. *United States*, 175 U. S. 423 (1899), and the cases he cites for the proposition that this Court has routinely enforced treaties under which foreign nationals have asserted rights, similarly stand only for the principle that the terms of a treaty govern its enforcement. See Reply Brief for Petitioner 4, 5, and n. 2. In each case, this Court first interpreted the treaty prior to finding it domestically enforceable. See, *e. g.*, *United States* v. *Rauscher*, 119 U. S. 407, 422–423 (1886) (holding that the treaty required extradition only for specified offenses); *Hopkirk* v. *Bell*, 3 Cranch 454, 458 (1806) (holding that the treaty of peace between Great Britain and the United States prevented the operation of a state statute of limitations on British debts).

agreements. Indeed, we agree with Medellín that, as a general matter, "an agreement to abide by the result" of an international adjudication—or what he really means, an agreement to give the result of such adjudication domestic legal effect—can be a treaty obligation like any other, so long as the agreement is consistent with the Constitution. See Brief for Petitioner 20. The point is that the particular treaty obligations on which Medellín relies do not of their own force create domestic law.

The dissent worries that our decision casts doubt on some 70-odd treaties under which the United States has agreed to submit disputes to the ICJ according to "roughly similar" provisions. See *post*, at 540–541, 552–553. Again, under our established precedent, some treaties are self-executing and some are not, depending on the treaty. That the judgment of an international tribunal might not automatically become domestic law hardly means the underlying treaty is "useless." See *post*, at 553; cf. *post*, at 548 (describing the British system in which treaties "virtually always requir[e] parliamentary legislation"). Such judgments would still constitute international obligations, the proper subject of political and diplomatic negotiations. See *Head Money Cases*, 112 U. S., at 598. And Congress could elect to give them wholesale effect (rather than the judgment-by-judgment approach hypothesized by the dissent, *post*, at 560) through implementing legislation, as it regularly has. See, *e. g.*, Foreign Affairs Reform and Restructuring Act of 1998, §2242, 112 Stat. 2681–822, note following 8 U. S. C. § 1231 (directing the "appropriate agencies" to "prescribe regulations to implement the obligations of the United States under Article 3" of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment); see also *infra*, at 521–522 (listing examples of legislation implementing international obligations).

Further, that an ICJ judgment may not be automatically enforceable in domestic courts does not mean the particular

underlying treaty is not. Indeed, we have held that a number of the "Friendship, Commerce, and Navigation" Treaties cited by the dissent, see Appendix B, *post*, are self-executing—based on "the language of the[se] Treat[ies]." See *Sumitomo Shoji America, Inc.*, *supra*, at 180, 189–190. In *Kolovrat* v. *Oregon*, 366 U. S. 187, 191, 196 (1961), for example, the Court found that Yugoslavian claimants denied inheritance under Oregon law were entitled to inherit personal property pursuant to an 1881 Treaty of Friendship, Navigation, and Commerce between the United States and Serbia. See also *Clark* v. *Allen*, 331 U. S. 503, 507–511, 517–518 (1947) (finding that the right to inherit real property granted German aliens under the Treaty of Friendship, Commerce and Consular Rights with Germany prevailed over California law). Contrary to the dissent's suggestion, see *post*, at 547, neither our approach nor our cases require that a treaty provide for self-execution in so many talismanic words; that is a caricature of the Court's opinion. Our cases simply require courts to decide whether a treaty's terms reflect a determination by the President who negotiated it and the Senate that confirmed it that the treaty has domestic effect.

In addition, Congress is up to the task of implementing non-self-executing treaties, even those involving complex commercial disputes. Cf. *post*, at 560 (BREYER, J., dissenting). The judgments of a number of international tribunals enjoy a different status because of implementing legislation enacted by Congress. See, *e. g.*, 22 U. S. C. § 1650a(a) ("An award of an arbitral tribunal rendered pursuant to chapter IV of the [Convention on the Settlement of Investment Disputes] shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States"); 9 U. S. C. §§ 201–208 ("The [U. N.] Convention on the Recogni-

tion and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter," §201). Such language demonstrates that Congress knows how to accord domestic effect to international obligations when it desires such a result.[12]

Further, Medellín frames his argument as though giving the *Avena* judgment binding effect in domestic courts simply conforms to the proposition that domestic courts generally give effect to foreign judgments. But Medellín does not ask us to enforce a foreign-court judgment settling a typical commercial or property dispute. See, *e. g.*, *Hilton* v. *Guyot*, 159 U. S. 113 (1895); *United States* v. *Arredondo*, 6 Pet. 691 (1832); see also Uniform Foreign Money-Judgments Recognition Act §1(2), 13 U. L. A., pt. 2, p. 44 (2002) ("'[F]oreign judgment' means any judgment of a foreign state granting or denying recovery of a sum of money"). Rather, Medellín argues that the *Avena* judgment has the effect of enjoining the operation of state law. What is more, on Medellín's view, the judgment would force the State to take action to "review and reconside[r]" his case. The general rule, however, is that judgments of foreign courts awarding injunctive relief, even as to private parties, let alone sovereign States, "are not generally entitled to enforcement." See 1 Restatement §481, Comment *b*, at 595.

In sum, while the ICJ's judgment in *Avena* creates an international law obligation on the part of the United States, it does not of its own force constitute binding federal law

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[12] That this Court has rarely had occasion to find a treaty non-self-executing is not all that surprising. See *post*, at 545 (BREYER, J., dissenting). To begin with, the Courts of Appeals have regularly done so. See, *e. g.*, *Pierre* v. *Gonzales*, 502 F. 3d 109, 119–120 (CA2 2007) (holding that the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is non-self-executing); *Singh* v. *Ashcroft*, 398 F. 3d 396, 404, n. 3 (CA6 2005) (same); *Beazley* v. *Johnson*, 242 F. 3d 248, 267 (CA5 2001) (holding that the International Covenant on Civil and Political Rights is non-self-executing). Further, as noted, Congress has not hesitated to pass implementing legislation for treaties that in its view require such legislation.

that pre-empts state restrictions on the filing of successive habeas petitions. As we noted in *Sanchez-Llamas*, a contrary conclusion would be extraordinary, given that basic rights guaranteed by our own Constitution do not have the effect of displacing state procedural rules. See 548 U. S., at 360. Nothing in the text, background, negotiating and drafting history, or practice among signatory nations suggests that the President or Senate intended the improbable result of giving the judgments of an international tribunal a higher status than that enjoyed by "many of our most fundamental constitutional protections." *Ibid.*

III

Medellín next argues that the ICJ's judgment in *Avena* is binding on state courts by virtue of the President's February 28, 2005 Memorandum. The United States contends that while the *Avena* judgment does not of its own force require domestic courts to set aside ordinary rules of procedural default, that judgment became the law of the land with precisely that effect pursuant to the President's Memorandum and his power "to establish binding rules of decision that preempt contrary state law." Brief for United States as *Amicus Curiae* 5. Accordingly, we must decide whether the President's declaration alters our conclusion that the *Avena* judgment is not a rule of domestic law binding in state and federal courts.[13]

A

The United States maintains that the President's constitutional role "uniquely qualifies" him to resolve the sensitive

[13]The dissent refrains from deciding the issue, but finds it "difficult to believe that in the exercise of his Article II powers pursuant to a ratified treaty, the President can *never* take action that would result in setting aside state law." *Post*, at 564. We agree. The questions here are the far more limited ones of whether he may unilaterally create federal law by giving effect to the judgment of this international tribunal pursuant to this non-self-executing treaty, and, if not, whether he may rely on other authority under the Constitution to support the action taken in this particular case. Those are the only questions we decide.

foreign policy decisions that bear on compliance with an ICJ decision and "to do so expeditiously." Brief for United States as *Amicus Curiae* 11, 12. We do not question these propositions. See, *e. g.*, *First Nat. City Bank* v. *Banco Nacional de Cuba*, 406 U. S. 759, 767 (1972) (plurality opinion) (The President has "the lead role . . . in foreign policy"); *American Ins. Assn.* v. *Garamendi*, 539 U. S. 396, 414 (2003) (Article II of the Constitution places with the President the "'vast share of responsibility for the conduct of our foreign relations'" (quoting *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 610–611 (1952) (Frankfurter, J., concurring))). In this case, the President seeks to vindicate United States interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law. These interests are plainly compelling.

Such considerations, however, do not allow us to set aside first principles. The President's authority to act, as with the exercise of any governmental power, "must stem either from an act of Congress or from the Constitution itself." *Youngstown*, *supra*, at 585; *Dames & Moore* v. *Regan*, 453 U. S. 654, 668 (1981).

Justice Jackson's familiar tripartite scheme provides the accepted framework for evaluating executive action in this area. First, "[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Youngstown*, 343 U. S., at 635 (concurring opinion). Second, "[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." *Id.*, at 637. In this circumstance, Presidential authority can derive support from "congressional inertia, indifference or quiescence." *Ibid.*

Finally, "[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb," and the Court can sustain his actions "only by disabling the Congress from acting upon the subject." *Id.*, at 637–638.

B

The United States marshals two principal arguments in favor of the President's authority "to establish binding rules of decision that preempt contrary state law." Brief for United States as *Amicus Curiae* 5. The Solicitor General first argues that the relevant treaties give the President the authority to implement the *Avena* judgment and that Congress has acquiesced in the exercise of such authority. The United States also relies upon an "independent" international dispute-resolution power wholly apart from the asserted authority based on the pertinent treaties. Medellín adds the additional argument that the President's Memorandum is a valid exercise of his power to take care that the laws be faithfully executed.

1

The United States maintains that the President's Memorandum is authorized by the Optional Protocol and the U. N. Charter. Brief for United States as *Amicus Curiae* 9. That is, because the relevant treaties "create an obligation to comply with *Avena*," they "*implicitly* give the President authority to implement that treaty-based obligation." *Id.*, at 11 (emphasis added). As a result, the President's Memorandum is well grounded in the first category of the *Youngstown* framework.

We disagree. The President has an array of political and diplomatic means available to enforce international obligations, but unilaterally converting a non-self-executing treaty into a self-executing one is not among them. The responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to

Congress. *Foster*, 2 Pet., at 315; *Whitney*, 124 U. S., at 194; *Igartúa-De La Rosa*, 417 F. 3d, at 150. As this Court has explained, when treaty stipulations are "not self-executing they can only be enforced pursuant to legislation to carry them into effect." *Whitney*, *supra*, at 194. Moreover, "[u]ntil such act shall be passed, the Court is not at liberty to disregard the existing laws on the subject." *Foster*, *supra*, at 315.

The requirement that Congress, rather than the President, implement a non-self-executing treaty derives from the text of the Constitution, which divides the treaty-making power between the President and the Senate. The Constitution vests the President with the authority to "make" a treaty. Art. II, §2. If the Executive determines that a treaty should have domestic effect of its own force, that determination may be implemented in "mak[ing]" the treaty, by ensuring that it contains language plainly providing for domestic enforceability. If the treaty is to be self-executing in this respect, the Senate must consent to the treaty by the requisite two-thirds vote, *ibid.*, consistent with all other constitutional restraints.

Once a treaty is ratified without provisions clearly according it domestic effect, however, whether the treaty will ever have such effect is governed by the fundamental constitutional principle that "'[t]he power to make the necessary laws is in Congress; the power to execute in the President.'" *Hamdan* v. *Rumsfeld*, 548 U. S. 557, 591 (2006) (quoting *Ex parte Milligan*, 4 Wall. 2, 139 (1866) (opinion of Chase, C. J.)); see U. S. Const., Art. I, §1 ("All legislative Powers herein granted shall be vested in a Congress of the United States"). As already noted, the terms of a non-self-executing treaty can become domestic law only in the same way as any other law—through passage of legislation by both Houses of Congress, combined with either the President's signature or a congressional override of a Presidential veto. See Art. I, §7. Indeed, "the President's power to see that

the laws are faithfully executed refutes the idea that he is to be a lawmaker." *Youngstown*, 343 U. S., at 587.

A non-self-executing treaty, by definition, is one that was ratified with the understanding that it is not to have domestic effect of its own force. That understanding precludes the assertion that Congress has implicitly authorized the President—acting on his own—to achieve precisely the same result. We therefore conclude, given the absence of congressional legislation, that the non-self-executing treaties at issue here did not "express[ly] or implied[ly]" vest the President with the unilateral authority to make them self-executing. See *id.*, at 635 (Jackson, J., concurring). Accordingly, the President's Memorandum does not fall within the first category of the *Youngstown* framework.

Indeed, the preceding discussion should make clear that the non-self-executing character of the relevant treaties not only refutes the notion that the ratifying parties vested the President with the authority to unilaterally make treaty obligations binding on domestic courts, but also implicitly prohibits him from doing so. When the President asserts the power to "enforce" a non-self-executing treaty by unilaterally creating domestic law, he acts in conflict with the implicit understanding of the ratifying Senate. His assertion of authority, insofar as it is based on the pertinent non-self-executing treaties, is therefore within Justice Jackson's third category, not the first or even the second. See *id.*, at 637–638.

Each of the two means described above for giving domestic effect to an international treaty obligation under the Constitution—for making law—requires joint action by the Executive and Legislative Branches: The Senate can ratify a self-executing treaty "ma[de]" by the Executive, or, if the ratified treaty is not self-executing, Congress can enact implementing legislation approved by the President. It should not be surprising that our Constitution does not contemplate vesting such power in the Executive alone. As Madison ex-

plained in The Federalist No. 47, under our constitutional system of checks and balances, "[t]he magistrate in whom the whole executive power resides cannot of himself make a law." J. Cooke ed., p. 326 (1961). That would, however, seem an apt description of the asserted executive authority unilaterally to give the effect of domestic law to obligations under a non-self-executing treaty.

The United States nonetheless maintains that the President's Memorandum should be given effect as domestic law because "this case involves a valid Presidential action in the context of Congressional 'acquiescence.'" Brief for United States as *Amicus Curiae* 11, n. 2. Under the *Youngstown* tripartite framework, congressional acquiescence is pertinent when the President's action falls within the second category—that is, when he "acts in absence of either a congressional grant or denial of authority." 343 U. S., at 637 (Jackson, J., concurring). Here, however, as we have explained, the President's effort to accord domestic effect to the *Avena* judgment does not meet that prerequisite.

In any event, even if we were persuaded that congressional acquiescence could support the President's asserted authority to create domestic law pursuant to a non-self-executing treaty, such acquiescence does not exist here. The United States first locates congressional acquiescence in Congress's failure to act following the President's resolution of prior ICJ controversies. A review of the Executive's actions in those prior cases, however, cannot support the claim that Congress acquiesced in this particular exercise of Presidential authority, for none of them remotely involved transforming an international obligation into domestic law and thereby displacing state law.[14]

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[14] Rather, in the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (*Nicar.* v. *U. S.*), 1986 I. C. J. 14 (Judgment of June 27), the President determined that the United States would *not* comply with the ICJ's conclusion that the United States owed reparations to Nicaragua. In the *Case Concerning Delimitation of the Maritime*

The United States also directs us to the President's "related" statutory responsibilities and to his "established role" in litigating foreign policy concerns as support for the President's asserted authority to give the ICJ's decision in *Avena* the force of domestic law. Brief for United States as *Amicus Curiae* 16–19. Congress has indeed authorized the President to represent the United States before the United Nations, the ICJ, and the Security Council, 22 U. S. C. § 287, but the authority of the President to represent the United

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Boundary in the Gulf of Maine Area (*Can.* v. *U. S.*), 1984 I. C. J. 246 (Judgment of Oct. 12), a federal agency—the National Oceanic and Atmospheric Administration—issued a final rule which complied with the ICJ's boundary determination. The *Case Concerning Rights of Nationals of the United States of America in Morocco* (*Fr.* v. *U. S.*), 1952 I. C. J. 176 (Judgment of Aug. 27), concerned the legal status of United States citizens living in Morocco; it was not enforced in United States courts.

The final two cases arose under the Vienna Convention. In the *LaGrand Case* (*F. R. G.* v. *U. S.*), 2001 I. C. J. 466 (Judgment of June 27), the ICJ ordered the review and reconsideration of convictions and sentences of German nationals denied consular notification. In response, the State Department sent letters to the States "encouraging" them to consider the Vienna Convention in the clemency process. Brief for United States as *Amicus Curiae* 20–21. Such encouragement did not give the ICJ judgment direct effect as domestic law; thus, it cannot serve as precedent for doing so in which Congress might be said to have acquiesced. In the *Case Concerning the Vienna Convention on Consular Relations* (*Para.* v. *U. S.*), 1998 I. C. J. 248 (Judgment of Apr. 9), the ICJ issued a provisional order, directing the United States to "*take all measures at its disposal* to ensure that [Breard] is not executed pending the final decision in [the ICJ's] proceedings." *Breard*, 523 U. S., at 374 (internal quotation marks omitted; emphasis added). In response, the Secretary of State sent a letter to the Governor of Virginia requesting that he stay Breard's execution. *Id.*, at 378. When Paraguay sought a stay of execution from this Court, the United States argued that it had taken every measure at its disposal: because "our federal system imposes limits on the federal government's ability to interfere with the criminal justice systems of the States," those measures included "only persuasion," not "legal compulsion." Brief for United States as *Amicus Curiae*, O. T. 1997, No. 97–8214 (A–732), p. 51. This of course is precedent contrary to the proposition asserted by the Solicitor General in this case.

States before such bodies speaks to the President's *international* responsibilities, not any unilateral authority to create domestic law. The authority expressly conferred by Congress in the international realm cannot be said to "invite" the Presidential action at issue here. See *Youngstown*, *supra*, at 637 (Jackson, J., concurring). At bottom, none of the sources of authority identified by the United States supports the President's claim that Congress has acquiesced in his asserted power to establish on his own federal law or to override state law.

None of this is to say, however, that the combination of a non-self-executing treaty and the lack of implementing legislation precludes the President from acting to comply with an international treaty obligation. It is only to say that the Executive cannot unilaterally execute a non-self-executing treaty by giving it domestic effect. That is, the non-self-executing character of a treaty constrains the President's ability to comply with treaty commitments by unilaterally making the treaty binding on domestic courts. The President may comply with the treaty's obligations by some other means, so long as they are consistent with the Constitution. But he may not rely upon a non-self-executing treaty to "establish binding rules of decision that preempt contrary state law." Brief for United States as *Amicus Curiae* 5.

2

We thus turn to the United States' claim that—independent of the United States' treaty obligations—the Memorandum is a valid exercise of the President's foreign affairs authority to resolve claims disputes with foreign nations. *Id.*, at 12–16. The United States relies on a series of cases in which this Court has upheld the authority of the President to settle foreign claims pursuant to an executive agreement. See *Garamendi*, 539 U. S., at 415; *Dames & Moore*, 453 U. S., at 679–680; *United States* v. *Pink*, 315 U. S. 203, 229 (1942);

United States v. *Belmont*, 301 U. S. 324, 330 (1937). In these cases this Court has explained that, if pervasive enough, a history of congressional acquiescence can be treated as a "gloss on 'Executive Power' vested in the President by § 1 of Art. II." *Dames & Moore*, *supra*, at 686 (some internal quotation marks omitted).

This argument is of a different nature than the one rejected above. Rather than relying on the United States' treaty obligations, the President relies on an independent source of authority in ordering Texas to put aside its procedural bar to successive habeas petitions. Nevertheless, we find that our claims-settlement cases do not support the authority that the President asserts in this case.

The claims-settlement cases involve a narrow set of circumstances: the making of executive agreements to settle civil claims between American citizens and foreign governments or foreign nationals. See, *e. g.*, *Belmont*, *supra*, at 327. They are based on the view that "a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned," can "raise a presumption that the [action] had been [taken] in pursuance of its consent." *Dames & Moore*, *supra*, at 686 (internal quotation marks omitted). As this Court explained in *Garamendi*:

> "Making executive agreements to settle claims of American nationals against foreign governments is a particularly longstanding practice . . . . Given the fact that the practice goes back over 200 years, and has received congressional acquiescence throughout its history, the conclusion that the President's control of foreign relations includes the settlement of claims is indisputable." 539 U. S., at 415 (internal quotation marks and brackets omitted).

Even still, the limitations on this source of executive power are clearly set forth and the Court has been careful to note

that "[p]ast practice does not, by itself, create power." *Dames & Moore*, *supra*, at 686.

The President's Memorandum is not supported by a "particularly longstanding practice" of congressional acquiescence, see *Garamendi*, *supra*, at 415, but rather is what the United States itself has described as "unprecedented action," Brief for United States as *Amicus Curiae* in *Sanchez-Llamas*, O. T. 2005, Nos. 05–51 and 04–10566, pp. 29–30. Indeed, the Government has not identified a single instance in which the President has attempted (or Congress has acquiesced in) a Presidential directive issued to state courts, much less one that reaches deep into the heart of the State's police powers and compels state courts to reopen final criminal judgments and set aside neutrally applicable state laws. Cf. *Brecht* v. *Abrahamson*, 507 U. S. 619, 635 (1993) ("States possess primary authority for defining and enforcing the criminal law" (quoting *Engle* v. *Isaac*, 456 U. S. 107, 128 (1982); internal quotation marks omitted)). The Executive's narrow and strictly limited authority to settle international claims disputes pursuant to an executive agreement cannot stretch so far as to support the current Presidential Memorandum.

3

Medellín argues that the President's Memorandum is a valid exercise of his "[T]ake Care" power. Brief for Petitioner 28. The United States, however, does not rely upon the President's responsibility to "take Care that the Laws be faithfully executed." U. S. Const., Art. II, §3. We think this a wise concession. This authority allows the President to execute the laws, not make them. For the reasons we have stated, the *Avena* judgment is not domestic law; accordingly, the President cannot rely on his Take Care powers here.

The judgment of the Texas Court of Criminal Appeals is affirmed.

It is so ordered.

JUSTICE STEVENS, concurring in the judgment.

There is a great deal of wisdom in JUSTICE BREYER's dissent. I agree that the text and history of the Supremacy Clause, as well as this Court's treaty-related cases, do not support a presumption against self-execution. See *post*, at 541–546. I also endorse the proposition that the Vienna Convention on Consular Relations, Apr. 24, 1963, [1970] 21 U. S. T. 77, T. I. A. S. No. 6820, "is itself self-executing and judicially enforceable." *Post*, at 555. Moreover, I think this case presents a closer question than the Court's opinion allows. In the end, however, I am persuaded that the relevant treaties do not authorize this Court to enforce the judgment of the International Court of Justice (ICJ) in *Case Concerning Avena and Other Mexican Nationals (Mex.* v. *U. S.)*, 2004 I. C. J. 12 (Judgment of Mar. 31) *(Avena)*.

The source of the United States' obligation to comply with judgments of the ICJ is found in Article 94(1) of the United Nations Charter, which was ratified in 1945. Article 94(1) provides that "[e]ach Member of the United Nations *undertakes to comply* with the decision of the [ICJ] in any case to which it is a party." 59 Stat. 1051, T. S. No. 993 (emphasis added). In my view, the words "undertakes to comply"—while not the model of either a self-executing or a non-self-executing commitment—are most naturally read as a promise to take additional steps to enforce ICJ judgments.

Unlike the text of some other treaties, the terms of the United Nations Charter do not necessarily incorporate international judgments into domestic law. Cf., *e. g.*, United Nations Convention on the Law of the Sea, Annex VI, Art. 39, Dec. 10, 1982, S. Treaty Doc. No. 103–39, 1833 U. N. T. S. 570 ("[D]ecisions of the [Seabed Disputes] Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought"). Moreover, Congress has passed implementing legislation to ensure the enforcement of other international judgments,

even when the operative treaty provisions use far more mandatory language than "undertakes to comply."[1]

On the other hand Article 94(1) does not contain the kind of unambiguous language foreclosing self-execution that is found in other treaties. The obligation to undertake to comply with ICJ decisions is more consistent with self-execution than, for example, an obligation to enact legislation. Cf., *e. g.*, International Plant Protection Convention, Art. I, Dec. 6, 1951, [1972] 23 U. S. T. 2770, T. I. A. S. No. 7465 ("[T]he contracting Governments undertake to adopt the legislative, technical and administrative measures specified in this Convention"). Furthermore, whereas the Senate has issued declarations of non-self-execution when ratifying some treaties, it did not do so with respect to the United Nations Charter.[2]

Absent a presumption one way or the other, the best reading of the words "undertakes to comply" is, in my judgment, one that contemplates future action by the political branches. I agree with the dissenters that "Congress is unlikely to authorize automatic judicial enforceability of *all* ICJ judgments, for that could include some politically sensitive judg-

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[1] See, *e. g.*, Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), ch. IV, §6, Art. 54(1), Mar. 18, 1965, [1966] 17 U. S. T. 1291, T. I. A. S. No. 6090 ("Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State"); 22 U. S. C. § 1650a ("An award of an arbitral tribunal rendered pursuant to chapter IV of the [ICSID Convention] shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States").

[2] Cf., *e. g.*, U. S. Reservations, Declarations and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. 8071 (1992) ("[T]he United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing").

ments and others better suited for enforcement by other branches." *Post*, at 560. But this concern counsels in favor of reading any ambiguity in Article 94(1) as leaving the choice of whether to comply with ICJ judgments, and in what manner, "to the political, not the judicial department." *Foster* v. *Neilson*, 2 Pet. 253, 314 (1829).[3]

The additional treaty provisions cited by the dissent do not suggest otherwise. In an annex to the United Nations Charter, the Statute of the International Court of Justice (ICJ Statute) states that a decision of the ICJ "has no binding force except between the parties and in respect of that particular case." Art. 59, 59 Stat. 1062. Because I read that provision as confining, not expanding, the effect of ICJ judgments, it does not make the undertaking to comply with such judgments any more enforceable than the terms of Article 94(1) itself. That the judgment is "binding" as a matter of international law says nothing about its domestic legal effect. Nor in my opinion does the reference to "compulsory jurisdiction" in the Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention, Art. I, Apr. 24, 1963, [1970] 21 U. S. T. 325, T. I. A. S. No. 6820, shed any light on the matter. This provision merely secures the consent of signatory nations to the specific jurisdiction of the ICJ with respect to claims arising out of the Vienna Convention. See ICJ Statute, Art. 36(1), 59 Stat. 1060 ("The jurisdiction of the Court comprises . . . all matters specially provided for . . . in treaties and conventions in force").

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[3] Congress' implementation options are broader than the dissent suggests. In addition to legislating judgment by judgment, enforcing all judgments indiscriminately, and devising "legislative bright lines," *post*, at 560, Congress could, for example, make ICJ judgments enforceable upon the expiration of a waiting period that gives the political branches an opportunity to intervene. Cf., *e. g.*, 16 U. S. C. § 1823 (imposing a 120-day waiting period before international fishery agreements take effect).

Even though the ICJ's judgment in *Avena* is not "the supreme Law of the Land," U. S. Const., Art. VI, cl. 2, no one disputes that it constitutes an international law obligation on the part of the United States, *ante*, at 504. By issuing a memorandum declaring that state courts should give effect to the judgment in *Avena*, the President made a commendable attempt to induce the States to discharge the Nation's obligation. I agree with the Texas judges and the majority of this Court that the President's memorandum is not binding law. Nonetheless, the fact that the President cannot legislate unilaterally does not absolve the United States from its promise to take action necessary to comply with the ICJ's judgment.

Under the express terms of the Supremacy Clause, the United States' obligation to "undertak[e] to comply" with the ICJ's decision falls on each of the States as well as the Federal Government. One consequence of our form of government is that sometimes States must shoulder the primary responsibility for protecting the honor and integrity of the Nation. Texas' duty in this respect is all the greater since it was Texas that—by failing to provide consular notice in accordance with the Vienna Convention—ensnared the United States in the current controversy. Having already put the Nation in breach of one treaty, it is now up to Texas to prevent the breach of another.

The decision in *Avena* merely obligates the United States "to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the [affected] Mexican nationals," 2004 I. C. J., at 72, ¶ 153(9), "with a view to ascertaining" whether the failure to provide proper notice to consular officials "caused actual prejudice to the defendant in the process of administration of criminal justice," *id.*, at 60, ¶ 121. The cost to Texas of complying with *Avena* would be minimal, particularly given the remote likelihood that the violation of the Vienna Convention actually prejudiced José

Ernesto Medellín. See *ante*, at 500–502, and n. 1. It is a cost that the State of Oklahoma unhesitatingly assumed.[1]

On the other hand, the costs of refusing to respect the ICJ's judgment are significant. The entire Court and the President agree that breach will jeopardize the United States' "plainly compelling" interests in "ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law." *Ante*, at 524. When the honor of the Nation is balanced against the modest cost of compliance, Texas would do well to recognize that more is at stake than whether judgments of the ICJ, and the principled admonitions of the President of the United States, trump state procedural rules in the absence of implementing legislation.

The Court's judgment, which I join, does not foreclose further appropriate action by the State of Texas.

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[1] In *Avena*, the ICJ expressed "great concern" that Oklahoma had set the date of execution for one of the Mexican nationals involved in the judgment, Osbaldo Torres, for May 18, 2004. 2004 I. C. J., at 28, ¶ 21. Responding to *Avena*, the Oklahoma Court of Criminal Appeals stayed Torres' execution and ordered an evidentiary hearing on whether Torres had been prejudiced by the lack of consular notification. See *Torres* v. *State*, No. PCD–04–442 (May 13, 2004), 43 I. L. M. 1227. On the same day, the Governor of Oklahoma commuted Torres' death sentence to life without the possibility of parole, stressing that (1) the United States signed the Vienna Convention, (2) that treaty is "important in protecting the rights of American citizens abroad," (3) the ICJ ruled that Torres' rights had been violated, and (4) the U. S. State Department urged his office to give careful consideration to the United States' treaty obligations. See Office of Governor Brad Henry, Press Release: Gov. Henry Grants Clemency to Death Row Inmate Torres (May 13, 2004), online at http://www.ok.gov/governor/display_article.php?article_id=301&article_type=1 (as visited Mar. 20, 2008, and available in Clerk of Court's case file). After the evidentiary hearing, the Oklahoma Court of Criminal Appeals held that Torres had failed to establish prejudice with respect to the guilt phase of his trial, and that any prejudice with respect to the sentencing phase had been mooted by the commutation order. *Torres* v. *State*, 120 P. 3d 1184 (2005).

JUSTICE BREYER, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, dissenting.

The Constitution's Supremacy Clause provides that "all Treaties . . . which shall be made . . . under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby." Art. VI, cl. 2. The Clause means that the "courts" must regard "a treaty . . . as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision." *Foster* v. *Neilson*, 2 Pet. 253, 314 (1829) (majority opinion of Marshall, C. J.).

In the *Avena* case the International Court of Justice (ICJ) (interpreting and applying the Vienna Convention on Consular Relations) issued a judgment that requires the United States to reexamine certain criminal proceedings in the cases of 51 Mexican nationals. *Case Concerning Avena and Other Mexican Nationals (Mex.* v. *U. S.)*, 2004 I. C. J. 12 (Judgment of Mar. 31) *(Avena)*. The question here is whether the ICJ's *Avena* judgment is enforceable now as a matter of domestic law, *i. e.*, whether it "operates of itself without the aid" of any further legislation.

The United States has signed and ratified a series of treaties obliging it to comply with ICJ judgments in cases in which it has given its consent to the exercise of the ICJ's adjudicatory authority. Specifically, the United States has agreed to submit, in this kind of case, to the ICJ's "compulsory jurisdiction" for purposes of "compulsory settlement." Optional Protocol Concerning the Compulsory Settlement of Disputes (Optional Protocol or Protocol), Art. I, Apr. 24, 1963, [1970] 21 U. S. T. 326, T. I. A. S. No. 6820 (capitalization altered). And it agreed that the ICJ's judgments would have "binding force . . . between the parties and in respect of [a] particular case." United Nations Charter, Art. 59, 59 Stat. 1062, T. S. No. 993 (1945). President Bush has determined that domestic courts should enforce this particular ICJ judgment. Memorandum for the Attorney General

(Feb. 28, 2005), App. to Pet. for Cert. 187a (hereinafter President's Memorandum). And Congress has done nothing to suggest the contrary. Under these circumstances, I believe the treaty obligations, and hence the judgment, resting as it does upon the consent of the United States to the ICJ's jurisdiction, bind the courts no less than would "an act of the [federal] legislature." *Foster*, *supra*, at 314.

I

To understand the issue before us, the reader must keep in mind three separate ratified United States treaties and one ICJ judgment against the United States. The first treaty, the Vienna Convention, contains two relevant provisions. The first requires the United States and other signatory nations to inform arrested foreign nationals of their separate Convention-given right to contact their nation's consul. The second says that these rights (of an arrested person) "shall be exercised in conformity with the laws and regulations" of the arresting nation, *provided that the "laws and regulations . . . enable full effect to be given to the purposes for which" those "rights . . . are intended."* See Vienna Convention on Consular Relations, Arts. 36(1)(b), 36(2), Apr. 24, 1963, [1970] 21 U. S. T. 100–101 (emphasis added).

The second treaty, the Optional Protocol, concerns the "compulsory settlement" of Vienna Convention disputes. 21 U. S. T., at 326. It provides that for parties that elect to subscribe to the Protocol, "[d]isputes arising out of the interpretation or application of the [Vienna] Convention" shall be submitted to the "compulsory jurisdiction of the International Court of Justice." Art. I, *ibid.* It authorizes any party that has consented to the ICJ's jurisdiction (by signing the Optional Protocol) to bring another such party before that Court. *Ibid.*

The third treaty, the United Nations Charter, says that every signatory nation "undertakes to comply with the decision of the International Court of Justice in any case to

which it is a party." Art. 94(1), 59 Stat. 1051. In an annex to the Charter, the Statute of the International Court of Justice (ICJ Statute) states that an ICJ judgment has "binding force . . . between the parties and in respect of that particular case." Art. 59, *id.*, at 1062. See also Art. 60, *id.*, at 1063 (ICJ "judgment is final and without appeal").

The judgment at issue is the ICJ's judgment in *Avena*, a case that Mexico brought against the United States on behalf of 52 nationals arrested in different States on different criminal charges. 2004 I. C. J., at 39. Mexico claimed that state authorities within the United States had failed to notify the arrested persons of their Vienna Convention rights and, by applying state procedural law in a manner which did not give full effect to the Vienna Convention rights, had deprived them of an appropriate remedy. *Ibid.* The ICJ judgment in *Avena* requires that the United States reexamine "by means of its own choosing" certain aspects of the relevant state criminal proceedings of 51 of these individual Mexican nationals. *Id.*, at 62, ¶ 129 (internal quotation marks omitted). The President has determined that this should be done. See President's Memorandum.

The critical question here is whether the Supremacy Clause requires Texas to follow, *i. e.*, to enforce, this ICJ judgment. The Court says "no." And it reaches its negative answer by interpreting the labyrinth of treaty provisions as creating a legal obligation that binds the United States internationally, but which, for Supremacy Clause purposes, is not automatically enforceable as domestic law. In the majority's view, the Optional Protocol simply sends the dispute to the ICJ; the ICJ Statute says that the ICJ will subsequently reach a judgment; and the U. N. Charter contains no more than a promise to "'undertak[e] to comply'" with that judgment. *Ante*, at 500. Such a promise, the majority says, does not as a domestic-law matter (in Chief Justice Marshall's words) "operat[e] of itself without the aid of any legislative provision." *Foster*, *supra*, at 314. Rather,

here (and presumably in any other ICJ judgment rendered pursuant to any of the approximately 70 U. S. treaties in force that contain similar provisions for submitting treaty-based disputes to the ICJ for decisions that bind the parties) Congress must enact specific legislation before ICJ judgments entered pursuant to our consent to compulsory ICJ jurisdiction can become domestic law. See Brief for International Court of Justice Experts as *Amici Curiae* 18 ("Approximately 70 U. S. treaties now in force contain obligations comparable to those in the Optional Protocol for submission of treaty-based disputes to the ICJ"); see also *id.*, at 18, n. 25.

In my view, the President has correctly determined that Congress need not enact additional legislation. The majority places too much weight upon treaty language that says little about the matter. The words "'undertak[e] to comply,'" for example, do not tell us whether an ICJ judgment rendered pursuant to the parties' consent to compulsory ICJ jurisdiction does, or does not, automatically become part of our domestic law. To answer that question we must look instead to our own domestic law, in particular, to the many treaty-related cases interpreting the Supremacy Clause. Those cases, including some written by Justices well aware of the Founders' original intent, lead to the conclusion that the ICJ judgment before us is enforceable as a matter of domestic law without further legislation.

A

Supreme Court case law stretching back more than 200 years helps explain what, for present purposes, the Founders meant when they wrote that "all Treaties . . . shall be the supreme Law of the Land." Art. VI, cl. 2. In 1796, for example, the Court decided the case of *Ware* v. *Hylton*, 3 Dall. 199. A British creditor sought payment of an American's Revolutionary War debt. The debtor argued that he had, under Virginia law, repaid the debt by complying with a state statute enacted during the Revolutionary War that

required debtors to repay money owed to British creditors into a Virginia state fund. *Id.*, at 220–221 (opinion of Chase, J.). The creditor, however, claimed that this state-sanctioned repayment did not count because a provision of the 1783 Paris Peace Treaty between Britain and the United States said that "'the creditors of either side should meet with no lawful impediment to the recovery of the full value . . . of all *bona fide* debts, theretofore contracted'"; and that provision, the creditor argued, effectively nullified the state law. *Id.*, at 203–204 (Reporter's Summary). The Court, with each Justice writing separately, agreed with the British creditor, held the Virginia statute invalid, and found that the American debtor remained liable for the debt. *Id.*, at 285.

The key fact relevant here is that Congress had not enacted a specific statute enforcing the treaty provision at issue. Hence the Court had to decide whether the provision was (to put the matter in present terms) "self-executing." Justice Iredell, a member of North Carolina's Ratifying Convention, addressed the matter specifically, setting forth views on which Justice Story later relied to explain the Founders' reasons for drafting the Supremacy Clause. 3 J. Story, Commentaries on the Constitution of the United States 696–697 (1833) (hereinafter Story). See Vázquez, The Four Doctrines of Self-Executing Treaties, 89 Am. J. Int'l L. 695, 697–700 (1995) (hereinafter Vázquez) (describing the history and purpose of the Supremacy Clause). See also Flaherty, History Right?: Historical Scholarship, Original Understanding, and Treaties as "Supreme Law of the Land," 99 Colum. L. Rev. 2095 (1999) (contending that the Founders crafted the Supremacy Clause to make ratified treaties self-executing). But see Yoo, Globalism and the Constitution: Treaties, Non-Self-Execution, and the Original Understanding, 99 Colum. L. Rev. 1955 (1999).

Justice Iredell pointed out that some treaty provisions, those, for example, declaring the United States an independ-

ent Nation or acknowledging its right to navigate the Mississippi River, were "*executed*," taking effect automatically upon ratification. 3 Dall., at 272. Other provisions were "*executory*," in the sense that they were "to be carried into execution" by each signatory nation "in the manner which the Constitution of that nation prescribes." *Ibid.* *Before* adoption of the U. S. Constitution, all such provisions would have taken effect as domestic law *only if* Congress on the American side, or Parliament on the British side, had written them into domestic law. *Id.*, at 274–277.

But, Justice Iredell adds, *after* the Constitution's adoption, while further parliamentary action remained necessary in Britain (where the "practice" of the need for an "act of parliament" in respect to "any thing of a legislative nature" had "been constantly observed," *id.*, at 275–276), further legislative action in respect to the treaty's debt-collection provision *was no longer necessary* in the United States. *Id.*, at 276–277. The ratification of the Constitution with its Supremacy Clause means that treaty provisions that bind the United States may (and in this instance did) also enter domestic law without further congressional action and automatically bind the States and courts as well. *Id.*, at 277.

"Under this Constitution," Justice Iredell concluded, "so far as a treaty constitutionally is binding, upon principles of *moral obligation*, it is also by the vigour of its own authority to be executed in fact. It would not otherwise be the *Supreme law* in the new sense provided for." *Ibid.*; see also Story, § 1833, at 697 (noting that the Supremacy Clause's language was crafted to make the Clause's "obligation more strongly felt by the state judges" and to "remov[e] every pretense" by which they could "escape from [its] controlling power"); see also The Federalist No. 42, p. 264 (C. Rossiter ed. 1961) (J. Madison) (Supremacy Clause "disembarrassed" the Convention of the problem presented by the Articles of Confederation where "treaties might be substantially frustrated by regulations of the States"). Justice Ire-

dell gave examples of provisions that would no longer require further legislative action, such as those requiring the release of prisoners, those forbidding war-related "'future confiscations'" and "'prosecutions,'" and, of course, the specific debt-collection provision at issue in the *Ware* case itself. 3 Dall., at 273, 277.

Some 30 years later, the Court returned to the "self-execution" problem. In *Foster*, 2 Pet. 253, the Court examined a provision in an 1819 treaty with Spain ceding Florida to the United States; the provision said that "'grants of land made'" by Spain before January 24, 1818, "'shall be ratified and confirmed'" to the grantee. *Id.*, at 310. Chief Justice Marshall, writing for the Court, noted that, as a general matter, one might expect a signatory nation to execute a treaty through a formal exercise of its domestic sovereign authority (*e. g.*, through an act of the legislature). *Id.*, at 314. But in the United States "*a different principle*" applies. *Ibid.* (emphasis added). The Supremacy Clause means that, here, a treaty is "the law of the land . . . to be regarded in Courts of justice as equivalent to an act of the legislature" and "operates of itself without the aid of any legislative provision" unless it specifically contemplates execution by the legislature and thereby "*addresses itself to the political, not the judicial department.*" *Ibid.* (emphasis added). The Court decided that the treaty provision in question was *not* self-executing; in its view, the words "shall be ratified" demonstrated that the provision foresaw further legislative action. *Id.*, at 315.

The Court, however, changed its mind about the result in *Foster* four years later, after being shown a less legislatively oriented, less tentative, but equally authentic Spanish-language version of the treaty. See *United States* v. *Percheman*, 7 Pet. 51, 88–89 (1833). And by 1840, instances in which treaty provisions automatically became part of domestic law were common enough for one Justice to write that "it would be a bold proposition" to assert "that an act of Con-

gress must be first passed" in order to give a treaty effect as "a supreme law of the land." *Lessee of Pollard's Heirs* v. *Kibbe*, 14 Pet. 353, 388 (1840) (Baldwin, J., concurring).

Since *Foster* and *Pollard*, this Court has frequently held or assumed that particular treaty provisions are self-executing, automatically binding the States without more. See Appendix A, *infra* (listing, as examples, 29 such cases, including 12 concluding that the treaty provision invalidates state or territorial law or policy as a consequence). See also Wu, Treaties' Domains, 93 Va. L. Rev. 571, 583–584 (2007) (concluding "enforcement against States is the primary and historically most significant type of treaty enforcement in the United States"). As far as I can tell, the Court has held to the contrary only in two cases: *Foster*, *supra*, which was later reversed, and *Cameron Septic Tank Co.* v. *Knoxville*, 227 U. S. 39 (1913), where specific congressional actions indicated that Congress thought further legislation necessary. See also Vázquez 716. The Court has found "self-executing" provisions in multilateral treaties as well as bilateral treaties. See, *e. g.*, *Trans World Airlines, Inc.* v. *Franklin Mint Corp.*, 466 U. S. 243, 252 (1984); *Bacardi Corp. of America* v. *Domenech*, 311 U. S. 150, 160, and n. 9, 161 (1940). And the subject matter of such provisions has varied widely, from extradition, see, *e. g.*, *United States* v. *Rauscher*, 119 U. S. 407, 411–412 (1886), to criminal trial jurisdiction, see *Wildenhus's Case*, 120 U. S. 1, 11, 17–18 (1887), to civil liability, see, *e. g.*, *El Al Israel Airlines, Ltd.* v. *Tsui Yuan Tseng*, 525 U. S. 155, 161–163 (1999), to trademark infringement, see *Bacardi*, *supra*, at 160, and n. 9, 161, to an alien's freedom to engage in trade, see, *e. g.*, *Jordan* v. *Tashiro*, 278 U. S. 123, 126, n. 1 (1928), to immunity from state taxation, see *Nielsen* v. *Johnson*, 279 U. S. 47, 50, 58 (1929), to land ownership, *Perchemen*, *supra*, at 88–89, and to inheritance, see, *e. g.*, *Kolovrat* v. *Oregon*, 366 U. S. 187, 191, n. 6, 198 (1961).

Of particular relevance to the present case, the Court has held that the United States may be obligated by treaty to

comply with the judgment of an international tribunal interpreting that treaty, despite the absence of any congressional enactment specifically requiring such compliance. See *Comegys* v. *Vasse*, 1 Pet. 193, 211–212 (1828) (holding that decision of tribunal rendered pursuant to a United States-Spain treaty, which obliged the parties to "undertake to make satisfaction" of treaty-based rights, was "conclusive and final" and "not re-examinable" in American courts); see also *Meade* v. *United States*, 9 Wall. 691, 725 (1870) (holding that decision of tribunal adjudicating claims arising under United States-Spain treaty "was final and conclusive, and bar[red] a recovery upon the merits" in American court).

All of these cases make clear that self-executing treaty provisions are not uncommon or peculiar creatures of our domestic law; that they cover a wide range of subjects; that the Supremacy Clause itself answers the self-execution question by applying many, but not all, treaty provisions directly to the States; and that the Clause answers the self-execution question differently than does the law in many other nations. See *supra*, at 541–545 and this page. The cases also provide criteria that help determine *which* provisions automatically so apply—a matter to which I now turn.

B

1

The case law provides no simple magic answer to the question whether a particular treaty provision is self-executing. But the case law does make clear that, insofar as today's majority looks for language about "self-execution" in the treaty itself and insofar as it erects "clear statement" presumptions designed to help find an answer, it is misguided. See, *e. g.*, *ante*, at 517 (expecting "clea[r] state[ment]" of parties' intent where treaty obligation "may interfere with state procedural rules"); *ante*, at 526 (for treaty to be self-executing, Executive should at drafting "ensur[e] that it contains language plainly providing for domestic enforceability").

The many treaty provisions that this Court has found self-executing contain no textual language on the point (see Appendix A, *infra*). Few, if any, of these provisions are clear. See, *e. g.*, *Ware*, 3 Dall., at 273 (opinion of Iredell, J.). Those that displace state law in respect to such quintessential state matters as, say, property, inheritance, or debt repayment, lack the "clea[r] state[ment]" that the Court today apparently requires. Compare *ante*, at 517 (majority expects "clea[r] state[ment]" of parties' intent where treaty obligation "may interfere with state procedural rules"). This is also true of those cases that deal with state rules roughly comparable to the sort that the majority suggests require special accommodation. See, *e. g.*, *Hopkirk* v. *Bell*, 3 Cranch 454, 457–458 (1806) (treaty pre-empts Virginia state statute of limitations). Cf. *ante*, at 517 (setting forth majority's reliance on case law that is apparently inapposite). These many Supreme Court cases finding treaty provisions to be self-executing cannot be reconciled with the majority's demand for textual clarity.

Indeed, the majority does not point to a single ratified United States treaty that contains the kind of "clea[r]" or "plai[n]" textual indication for which the majority searches. *Ante*, at 517, 526. JUSTICE STEVENS' reliance upon one ratified and one *un*-ratified treaty to make the point that a treaty *could* speak clearly on the matter of self-execution, see *ante*, at 533–534, and n. 1 (opinion concurring in judgment), does suggest that there are a few such treaties. But that simply highlights how few of them actually *do* speak clearly on the matter. And that is not because the United States never, or hardly ever, has entered into a treaty with self-executing provisions. The case law belies any such conclusion. Rather, it is because the issue whether further legislative action is required before a treaty provision takes domestic effect in a signatory nation is often a matter of how that nation's domestic law regards the provision's legal status. And that domestic status-determining law differs markedly from one nation to another. See generally Hollis,

Comparative Approach to Treaty Law and Practice, in National Treaty Law and Practice 1, 9–50 (D. Hollis, M. Blakeslee, & L. Ederington eds. 2005) (hereinafter Hollis). As Justice Iredell pointed out 200 years ago, Britain, for example, taking the view that the British Crown makes treaties but Parliament makes domestic law, virtually always requires parliamentary legislation. See *Ware*, *supra*, at 274–277; Sinclair, Dickson, & Maciver, United Kingdom, in National Treaty Law and Practice, *supra*, at 727, 733, and n. 9 (in Britain, "'treaties are not self-executing'" (citing *Queen* v. *Secretary of State for Foreign and Commonwealth Affairs, ex parte Lord Rees-Mogg*, [1994] Q. B. 552 (1993))). See also Torruella, The *Insular Cases:* The Establishment of a Regime of Political Apartheid, 29 U. Pa. J. Int'l L. 283, 337 (2007). On the other hand, the United States, with its Supremacy Clause, does not take Britain's view. See, *e. g.*, *Ware*, *supra*, at 277 (opinion of Iredell, J.). And the law of other nations, the Netherlands for example, directly incorporates many treaties concluded by the executive into its domestic law even without explicit parliamentary approval of the treaty. See Brouwer, The Netherlands, in National Treaty Law and Practice, *supra*, at 483, 483–502.

The majority correctly notes that the treaties do not explicitly state that the relevant obligations are self-executing. But given the differences among nations, why would drafters write treaty language stating that a provision about, say, alien property inheritance, is self-executing? How could those drafters achieve agreement when one signatory nation follows one tradition and a second follows another? Why would such a difference matter sufficiently for drafters to try to secure language that would prevent, for example, Britain's following treaty ratification with a further law while (perhaps unnecessarily) insisting that the United States apply a treaty provision without further domestic legislation? Above all, what does the absence of specific language about

"self-execution" prove? It may reflect the drafters' awareness of national differences. It may reflect the practical fact that drafters, favoring speedy, effective implementation, conclude they should best leave national legal practices alone. It may reflect the fact that achieving international agreement on *this* point is simply a game not worth the candle.

In a word, for present purposes, the absence or presence of language in a treaty about a provision's self-execution proves nothing at all. At best the Court is hunting the snark. At worst it erects legalistic hurdles that can threaten the application of provisions in many existing commercial and other treaties and make it more difficult to negotiate new ones. (For examples, see Appendix B, *infra*.)

2

The case law also suggests practical, context-specific criteria that this Court has previously used to help determine whether, for Supremacy Clause purposes, a treaty provision is self-executing. The provision's text matters very much. Cf. *ante*, at 514–516. But that is not because it contains language that explicitly refers to self-execution. For reasons I have already explained, Part I–B–1, *supra*, one should not expect *that* kind of textual statement. Drafting history is also relevant. But, again, that is not because it will explicitly address the relevant question. Instead text and history, along with subject matter and related characteristics, will help our courts determine whether, as Chief Justice Marshall put it, the treaty provision "addresses itself to the political . . . department[s]" for further action or to "the judicial department" for direct enforcement. *Foster*, 2 Pet., at 314; see also *Ware*, 3 Dall., at 244 (opinion of Chase, J.) ("No one can doubt that a treaty may stipulate, that certain acts shall be done by the Legislature; that other acts shall be done by the Executive; and others by the Judiciary").

In making this determination, this Court has found the provision's subject matter of particular importance. Does

the treaty provision declare peace? Does it promise not to engage in hostilities? If so, it addresses itself to the political branches. See *id.*, at 259–262 (opinion of Iredell, J.). Alternatively, does it concern the adjudication of traditional private legal rights such as rights to own property, to conduct a business, or to obtain civil tort recovery? If so, it may well address itself to the judiciary. Enforcing such rights and setting their boundaries is the bread-and-butter work of the courts. See, *e. g.*, *Clark* v. *Allen*, 331 U. S. 503 (1947) (treating provision with such subject matter as self-executing); *Asakura* v. *Seattle*, 265 U. S. 332 (1924) (same).

One might also ask whether the treaty provision confers specific, detailed individual legal rights. Does it set forth definite standards that judges can readily enforce? Other things being equal, where rights are specific and readily enforceable, the treaty provision more likely "addresses" the judiciary. See, *e. g.*, *Olympic Airways* v. *Husain*, 540 U. S. 644 (2004) (specific conditions for air-carrier civil liability); *Geofroy* v. *Riggs*, 133 U. S. 258 (1890) (French citizens' inheritance rights). Cf. *Foster*, *supra*, at 314–315 (treaty provision stating that landholders' titles "shall be ratified and confirmed" foresees legislative action).

Alternatively, would direct enforcement require the courts to create a new cause of action? Would such enforcement engender constitutional controversy? Would it create constitutionally undesirable conflict with the other branches? In such circumstances, it is not likely that the provision contemplates direct judicial enforcement. See, *e. g.*, *Asakura*, *supra*, at 341 (although "not limited by any express provision of the Constitution," the treaty-making power of the United States "does not extend 'so far as to authorize what the Constitution forbids' ").

Such questions, drawn from case law stretching back 200 years, do not create a simple test, let alone a magic formula. But they do help to constitute a practical, context-specific judicial approach, seeking to separate run-of-the-mill judicial

matters from other matters, sometimes more politically charged, sometimes more clearly the responsibility of other branches, sometimes lacking those attributes that would permit courts to act on their own without more ado. And such an approach is all that we need to find an answer to the legal question now before us.

C

Applying the approach just described, I would find the relevant treaty provisions self-executing as applied to the ICJ judgment before us (giving that judgment domestic legal effect) for the following reasons, taken together.

First, the language of the relevant treaties strongly supports direct judicial enforceability, at least of judgments of the kind at issue here. The Optional Protocol bears the title "Compulsory Settlement of Disputes," thereby emphasizing the mandatory and binding nature of the procedures it sets forth. 21 U. S. T., at 326. The body of the Protocol says specifically that "any party" that has consented to the ICJ's "compulsory jurisdiction" may bring a "dispute" before the court against any other such party. Art. I, *ibid.* And the Protocol contrasts proceedings of the compulsory kind with an alternative "conciliation procedure," the recommendations of which a party may decide "not" to "accep[t]." Art. III, *id.*, at 327. Thus, the Optional Protocol's basic objective is not just to provide a forum for *settlement* but to provide a forum for *compulsory* settlement.

Moreover, in accepting Article 94(1) of the Charter, "[e]ach Member . . . undertakes to comply with the decision" of the ICJ "in any case to which it is a party." 59 Stat. 1051. And the ICJ Statute (part of the U. N. Charter) makes clear that a decision of the ICJ between parties that have consented to the ICJ's compulsory jurisdiction has "*binding force* . . . between the parties and in respect of that particular case." Art. 59, *id.*, at 1062 (emphasis added). Enforcement of a court's judgment that has "binding force" involves quintessential judicial activity.

True, neither the Protocol nor the Charter explicitly states that the obligation to comply with an ICJ judgment automatically binds a party *as a matter of domestic law* without further domestic legislation. *But how could the language of those documents do otherwise?* The treaties are multilateral. And, as I have explained, some signatories follow British further-legislation-always-needed principles, others follow United States Supremacy Clause principles, and still others, *e. g.*, the Netherlands, can directly incorporate treaty provisions into their domestic law in particular circumstances. See Hollis 9–50. Why, given national differences, would drafters, seeking as strong a legal obligation as is practically attainable, use treaty language that *requires* all signatories to adopt uniform domestic-law treatment in this respect?

The absence of that likely unobtainable language can make no difference. We are considering the language for purposes of applying the Supremacy Clause. And for that purpose, this Court has found to be self-executing multilateral treaty language that is far less direct or forceful (on the relevant point) than the language set forth in the present treaties. See, *e. g.*, *Trans World Airlines*, 466 U. S., at 247, 252; *Bacardi*, 311 U. S., at 160, and n. 9, 161. The language here in effect tells signatory nations to make an ICJ compulsory jurisdiction judgment "as binding as you can." Thus, assuming other factors favor self-execution, the language *adds*, rather than *subtracts*, support.

Indeed, as I have said, *supra*, at 540–541, the United States has ratified approximately 70 treaties with ICJ dispute resolution provisions roughly similar to those contained in the Optional Protocol; many of those treaties contemplate ICJ adjudication of the sort of substantive matters (property, commercial dealings, and the like) that the Court has found self-executing, or otherwise appear addressed to the judicial branch. See Appendix B, *infra*. None of the ICJ provisions in these treaties contains stronger language about

self-execution than the language at issue here. See, *e. g.*, Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Denmark, Art. XXIV(2), Oct. 1, 1951, [1961] 12 U. S. T. 935, T. I. A. S. No. 4797 ("Any dispute between the Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means"). In signing these treaties (in respect to, say, alien land ownership provisions) was the United States engaging in a near useless act? Does the majority believe the drafters expected Congress to enact further legislation about, say, an alien's inheritance rights, decision by decision?

I recognize, as the majority emphasizes, that the U. N. Charter uses the words "undertakes to comply," rather than, say, "shall comply" or "must comply." But what is inadequate about the word "undertak[e]"? A leading contemporary dictionary defined it in terms of "lay[ing] oneself under obligation . . . to perform or to execute." Webster's New International Dictionary 2770 (2d ed. 1939). And that definition is just what the equally authoritative Spanish version of the provision (familiar to Mexico) says directly: The words "compromete a cumplir" indicate a present obligation to execute, without any tentativeness of the sort the majority finds in the English word "undertakes." See Carta de las Naciones Unidas, Art. 94(1), 59 Stat. 1175 (1945); Spanish and English Legal and Commercial Dictionary 44 (1945) (defining "comprometer" as "become liable"); *id.*, at 59 (defining "cumplir" as "to perform, discharge, carry out, execute"); see also Art. 111, 59 Stat. 1054 (Spanish-language version equally valid); *Percheman*, 7 Pet., at 88–89 (looking to Spanish version of a treaty to clear up ambiguity in English version). Cf. *Todok* v. *Union State Bank of Harvard*, 281 U. S. 449, 453 (1930) (treating a treaty provision as self-executing even though it *expressly* stated what the majority says the

word "undertakes" *implicitly* provides: that "'[t]he United States . . . shall be at liberty to make respecting this matter, such laws as they think proper'").

And even if I agreed with JUSTICE STEVENS that the language is perfectly ambiguous (which I do not), I could not agree that "the best reading . . . is . . . one that contemplates future action by the political branches." *Ante*, at 534. The consequence of such a reading is to place the fate of an international promise made by the United States in the hands of a single State. See *ante*, at 536–537. And that is precisely the situation that the Framers sought to prevent by enacting the Supremacy Clause. See 3 Story 696 (purpose of Supremacy Clause "was probably to obviate" the "difficulty" of a system where treaties were "dependent upon the good will of the states for their execution"); see also *Ware*, 3 Dall., at 277–278 (opinion of Iredell, J.).

I also recognize, as the majority emphasizes, *ante*, at 509–511, that the U. N. Charter says that "[i]f any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the International Court of Justice, the other party may have recourse to the Security Council." Art. 94(2), 59 Stat. 1051. And when the Senate ratified the charter, it took comfort in the fact that the United States has a veto in the Security Council. See 92 Cong. Rec. 10694–10695 (1946) (statements of Sens. Pepper and Connally).

But what has that to do with the matter? To begin with, the Senate would have been contemplating politically significant ICJ decisions, not, *e. g.*, the bread-and-butter commercial and other matters that are the typical subjects of self-executing treaty provisions. And in any event, both the Senate debate and U. N. Charter provision discuss and describe what happens (or does not happen) when a nation decides *not* to carry out an ICJ decision. See Charter of the United Nations for the Maintenance of International Peace and Security: Hearings before the Senate Committee on Foreign Relations, 79th Cong., 1st Sess., 286 (1945) (statement

of Leo Pasvolsky, Special Assistant to the Secretary of State for International Organization and Security Affairs) ("[W]hen the Court has rendered a judgment and one of the parties refuses to accept it, then the dispute becomes political rather than legal"). The debates refer to remedies for a breach of our promise to carry out an ICJ decision. The Senate understood, for example, that Congress (unlike legislatures in other nations that do not permit domestic legislation to trump treaty obligations, Hollis 47–49) can block through legislation self-executing, as well as non-self-executing determinations. The debates nowhere refer to the method we use for affirmatively carrying out an ICJ obligation that no political branch has decided to dishonor, still less to a decision that the President (without congressional dissent) seeks to enforce. For that reason, these aspects of the ratification debates are here beside the point. See *infra*, at 560.

The upshot is that treaty language says that an ICJ decision is legally binding, but it leaves the implementation of that binding legal obligation to the domestic law of each signatory nation. In this Nation, the Supremacy Clause, as long and consistently interpreted, indicates that ICJ decisions rendered pursuant to provisions for binding adjudication must be domestically legally binding and enforceable in domestic courts *at least sometimes*. And for purposes of this argument, that conclusion is all that I need. The remainder of the discussion will explain why, if ICJ judgments *sometimes* bind domestic courts, then they have that effect here.

Second, the Optional Protocol here applies to a dispute about the meaning of a Vienna Convention provision that is itself self-executing and judicially enforceable. The Convention provision is about an individual's "rights," namely, his right upon being arrested to be informed of his separate right to contact his nation's consul. See Art. 36(1)(b), 21 U. S. T., at 101. The provision language is precise. The dis-

pute arises at the intersection of an individual right with ordinary rules of criminal procedure; it consequently concerns the kind of matter with which judges are familiar. The provisions contain judicially enforceable standards. See Art. 36(2), *ibid.* (providing for exercise of rights "in conformity with the laws and regulations" of the arresting nation provided that the "laws and regulations . . . enable full effect to be given to the purposes for which the rights accorded under this Article are intended"). And the judgment itself requires a further hearing of a sort that is typically judicial. See *infra*, at 562–564.

This Court has found similar treaty provisions self-executing. See, *e. g.*, *Rauscher*, 119 U. S., at 410–411, 429–430 (violation of extradition treaty could be raised as defense in criminal trial); *Johnson* v. *Browne*, 205 U. S. 309, 317–322 (1907) (extradition treaty required grant of writ of habeas corpus); *Wildenhus's Case*, 120 U. S., at 11, 17–18 (treaty defined scope of state jurisdiction in a criminal case). It is consequently not surprising that, when Congress ratified the Convention, the State Department reported that the "Convention is considered entirely self-executive and does not require any implementing or complementing legislation." S. Exec. Rep. No. 91–9, p. 5 (1969); see also *id.*, at 18 ("To the extent that there are conflicts with Federal legislation or State laws the Vienna Convention, after ratification, would govern"). And the Executive Branch has said in this Court that other, indistinguishable Vienna Convention provisions are self-executing. See Brief for United States as *Amicus Curiae* in *Sanchez-Llamas* v. *Oregon*, O. T. 2005, Nos. 05–51 and 04–10566, p. 14, n. 2; cf. *ante*, at 506, n. 4 (majority leaves question open).

Third, logic suggests that a treaty provision providing for "final" and "binding" judgments that "settl[e]" treaty-based disputes is self-executing insofar as the judgment in question concerns the meaning of an underlying treaty provision that is itself self-executing. Imagine that two parties to a con-

tract agree to binding arbitration about whether a contract provision's word "grain" includes rye. They would expect that, if the arbitrator decides that the word "grain" does include rye, the arbitrator will then simply read the relevant provision as if it said "grain including rye." They would also expect the arbitrator to issue a binding award that embodies whatever relief would be appropriate under that circumstance.

Why treat differently the parties' agreement to binding ICJ determination about, *e. g.*, the proper interpretation of the Vienna Convention clauses containing the rights here at issue? Why not simply read the relevant Vienna Convention provisions as if (between the parties and in respect to the 51 individuals at issue) they contain words that encapsulate the ICJ's decision? See Art. 59, 59 Stat. 1062 (ICJ decision has "binding force . . . between the parties and in respect of [the] particular case"). Why would the ICJ judgment not bind in precisely the same way those words would bind if they appeared in the relevant Vienna Convention provisions—just as the ICJ says, for purposes of this case, that they do?

To put the same point differently: What sense would it make (1) to make a self-executing promise and (2) to promise to accept as final an ICJ judgment interpreting that self-executing promise, yet (3) to insist that the judgment itself is not self-executing (*i. e.*, that Congress must enact specific legislation to enforce it)?

I am not aware of any satisfactory answer to these questions. It is no answer to point to the fact that in *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331 (2006), this Court interpreted the relevant Convention provisions differently from the ICJ in *Avena*. This Court's *Sanchez-Llamas* interpretation binds our courts with respect to individuals whose rights were not espoused by a state party in *Avena*. Moreover, as the Court itself recognizes, see *ante*, at 497–499, and as the President recognizes, see President's Memorandum,

the question here is the very different question of applying the ICJ's *Avena* judgment to the very parties whose interests Mexico and the United States espoused in the ICJ *Avena* proceeding. It is in respect to these individuals that the United States has promised the ICJ decision will have binding force. Art. 59, 59 Stat. 1062. See 1 Restatement (Second) of Conflict of Laws §98 (1969); 1 Restatement (Third) of Foreign Relations §481 (1986); 1 Restatement (Second) of Judgments §17 (1980) (all calling for recognition of judgment rendered after fair hearing in a contested proceeding before a court with adjudicatory authority over the case). See also 1 Restatement (Second) of Conflict of Laws §106 ("A judgment will be recognized and enforced in other states even though an error of fact or of law was made in the proceedings before judgment . . . "); *id.*, §106, Comment *a* ("Th[is] rule is . . . applicable to judgments rendered in foreign nations . . . "); Reese, The Status in This Country of Judgments Rendered Abroad, 50 Colum. L. Rev. 783, 789 (1950) ("[Foreign] judgments will not be denied effect merely because the original court made an error either of fact or of law").

Contrary to the majority's suggestion, see *ante*, at 511–512, that binding force does not disappear by virtue of the fact that Mexico, rather than Medellín himself, presented his claims to the ICJ. Mexico brought the *Avena* case in part in "the exercise of its right of diplomatic protection of its nationals," *e. g.*, 2004 I. C. J., at 20–21, ¶¶13(1), (3), including Medellín, see *id.*, at 25, ¶16. Such derivative claims are a well-established feature of international law, and the United States has several times asserted them on behalf of its own citizens. See 2 Restatement (Third) of Foreign Relations, *supra*, §713, Comments *a*, *b*, at 217–218; *Case Concerning Elettronic Sicula S. p. A. (U. S. v. Italy)*, 1989 I. C. J. 15, 20 (Judgment of July 20); *Case Concerning United States Diplomatic and Consular Staff in Tehran (U. S. v. Iran)*, 1979 I. C. J. 7, 8 (Judgment of Dec. 15); *Case Concerning*

Rights of Nationals of the United States of America in Morocco (Fr. v. *U. S.)*, 1952 I. C. J. 176, 180–181 (Judgment of Aug. 27). They are treated in relevant respects as the claims of the represented individuals themselves. See 2 Restatement (Third) of Foreign Relations, § 713, Comments *a*, *b*. In particular, they can give rise to remedies, tailored to the individual, that bind the nation against whom the claims are brought (here, the United States). See *ibid.*; see also, *e. g.*, *Frelinghuysen* v. *Key*, 110 U. S. 63, 71–72 (1884).

Nor does recognition of the ICJ judgment as binding with respect to the individuals whose claims were espoused by Mexico in any way derogate from the Court's holding in *Sanchez-Llamas*, *supra*. See *ante*, at 512–513, n. 8. This case does not implicate the general interpretive question answered in *Sanchez-Llamas:* whether the Vienna Convention displaces state procedural rules. We are instead confronted with the discrete question of Texas' obligation to comply with a binding judgment issued by a tribunal with undisputed jurisdiction to adjudicate the rights of the individuals named therein. "It is inherent in international adjudication that an international tribunal may reject one country's legal position in favor of another's—and the United States explicitly accepted this possibility when it ratified the Optional Protocol." Brief for United States as *Amicus Curiae* 22.

Fourth, the majority's very different approach has seriously negative practical implications. The United States has entered into at least 70 treaties that contain provisions for ICJ dispute settlement similar to the Protocol before us. Many of these treaties contain provisions similar to those this Court has previously found self-executing—provisions that involve, for example, property rights, contract and commercial rights, trademarks, civil liability for personal injury, rights of foreign diplomats, taxation, domestic-court jurisdiction, and so forth. Compare Appendix A, *infra*, with Appendix B, *infra*. If the Optional Protocol here, taken to-

gether with the U. N. Charter and its annexed ICJ Statute, is insufficient to warrant enforcement of the ICJ judgment before us, it is difficult to see how one could reach a different conclusion in any of these other instances. And the consequence is to undermine longstanding efforts in those treaties to create an effective international system for interpreting and applying many, often commercial, self-executing treaty provisions. I thus doubt that the majority is right when it says, "We do not suggest that treaties can never afford binding domestic effect to international tribunal judgments." *Ante*, at 519. In respect to the 70 treaties that currently refer disputes to the ICJ's binding adjudicatory authority, some multilateral, some bilateral, that is just what the majority has done.

Nor can the majority look to congressional legislation for a quick fix. Congress is unlikely to authorize automatic judicial enforceability of *all* ICJ judgments, for that could include some politically sensitive judgments and others better suited for enforcement by other branches: for example, those touching upon military hostilities, naval activity, handling of nuclear material, and so forth. Nor is Congress likely to have the time available, let alone the will, to legislate judgment-by-judgment enforcement of, say, the ICJ's (or other international tribunals') resolution of non-politically-sensitive commercial disputes. And as this Court's prior case law has avoided laying down bright-line rules but instead has adopted a more complex approach, it seems unlikely that Congress will find it easy to develop legislative bright lines that pick out those provisions (addressed to the Judicial Branch) where self-execution seems warranted. But, of course, it is not necessary for Congress to do so—at least not if one believes that this Court's Supremacy Clause cases *already* embody criteria likely to work reasonably well. It is those criteria that I would apply here.

Fifth, other factors, related to the particular judgment here at issue, make that judgment well suited to direct judi-

cial enforcement. The specific issue before the ICJ concerned "'review and reconsideration'" of the "possible prejudice" caused in each of the 51 affected cases by an arresting State's failure to provide the defendant with rights guaranteed by the Vienna Convention. *Avena*, 2004 I. C. J., at 65, ¶ 138. This review will call for an understanding of how criminal procedure works, including whether, and how, a notification failure may work prejudice. *Id.*, at 56–57. As the ICJ itself recognized, "it is the judicial process that is suited to this task." *Id.*, at 66, ¶ 140. Courts frequently work with criminal procedure and related prejudice. Legislatures do not. Judicial standards are readily available for working in this technical area. Legislative standards are not readily available. Judges typically determine such matters, deciding, for example, whether further hearings are necessary, after reviewing a record in an individual case. Congress does not normally legislate in respect to individual cases. Indeed, to repeat what I said above, what kind of special legislation does the majority believe Congress ought to consider?

Sixth, to find the United States' treaty obligations self-executing as applied to the ICJ judgment (and consequently to find that judgment enforceable) does not threaten constitutional conflict with other branches; it does not require us to engage in nonjudicial activity; and it does not require us to create a new cause of action. The only question before us concerns the application of the ICJ judgment as binding law applicable to the parties in a particular criminal proceeding that Texas law creates independently of the treaty. I repeat that the question before us does not involve the creation of a private right of action (and the majority's reliance on authority regarding such a circumstance is misplaced, see *ante*, at 506, n. 3).

Seventh, neither the President nor Congress has expressed concern about direct judicial enforcement of the ICJ decision. To the contrary, the President favors enforcement of this

judgment. Thus, insofar as foreign policy impact, the interrelation of treaty provisions, or any other matter within the President's special treaty, military, and foreign affairs responsibilities might prove relevant, such factors *favor*, rather than militate against, enforcement of the judgment before us. See, *e. g.*, *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 348 (2005) (noting Court's "customary policy of deference to the President in matters of foreign affairs").

For these seven reasons, I would find that the United States' treaty obligation to comply with the ICJ judgment in *Avena* is enforceable in court in this case without further congressional action beyond Senate ratification of the relevant treaties. The majority reaches a different conclusion because it looks for the wrong thing (explicit textual expression about self-execution) using the wrong standard (clarity) in the wrong place (the treaty language). Hunting for what the text cannot contain, it takes a wrong turn. It threatens to deprive individuals, including businesses, property owners, testamentary beneficiaries, consular officials, and others, of the workable dispute resolution procedures that many treaties, including commercially oriented treaties, provide. In a world where commerce, trade, and travel have become ever more international, that is a step in the wrong direction.

Were the Court for a moment to shift the direction of its legal gaze, looking instead to the Supremacy Clause and to the extensive case law interpreting that Clause as applied to treaties, I believe it would reach a better supported, more felicitous conclusion. That approach, well embedded in Court case law, leads to the conclusion that the ICJ judgment before us is judicially enforceable without further legislative action.

II

A determination that the ICJ judgment is enforceable does not quite end the matter, for the judgment itself requires us to make one further decision. It directs the

United States to provide further judicial review of the 51 cases of Mexican nationals "by means of its own choosing." *Avena*, 2004 I. C. J., at 72, ¶ 153(9). As I have explained, I believe the judgment addresses itself to the Judicial Branch. This Court consequently must "choose" the means. And rather than, say, conducting the further review in this Court, or requiring Medellín to seek the review in another federal court, I believe that the proper forum for review would be the Texas-court proceedings that would follow a remand of this case.

Beyond the fact that a remand would be the normal course upon reversing a lower court judgment, there are additional reasons why further state-court review would be particularly appropriate here. The crime took place in Texas, and the prosecution at issue is a Texas prosecution. The President has specifically endorsed further Texas-court review. See President's Memorandum. The ICJ judgment requires further hearings as to whether the police failure to inform Medellín of his Vienna Convention rights prejudiced Medellín, even if such hearings would not otherwise be available under Texas' procedural default rules. While Texas has already considered that matter, it did not consider fully, for example, whether appointed counsel's coterminous 6-month suspension from the practice of the law "caused actual prejudice to the defendant"—prejudice that would not have existed had Medellín known he could contact his consul and thereby find a different lawyer. *Id.*, at 60, ¶ 121.

Finally, Texas law authorizes a criminal defendant to seek postjudgment review. See Tex. Code Crim. Proc. Ann., Art. 11.071, § 5(a)(1) (Vernon Supp. 2006). And Texas law provides for further review where American law provides a "'legal basis'" that was previously "'unavailable.'" See *Ex parte Medellín*, 223 S. W. 3d 315, 352 (Tex. Crim. App. 2006). Thus, I would send this case back to the Texas courts, which must then apply the *Avena* judgment as binding law. See U. S. Const., Art. VI, cl. 2; see also, *e. g.*,

Dominguez v. *State*, 90 Tex. Crim. 92, 99, 234 S. W. 79, 83 (1921) (recognizing that treaties are "part of the supreme law of the land" and that "it is the duty of the courts of the state to take cognizance of, construe and give effect" to them (internal quotation marks omitted)).

III

Because the majority concludes that the Nation's international legal obligation to enforce the ICJ's decision is not automatically a domestic legal obligation, it must then determine whether the President has the constitutional authority to enforce it. And the majority finds that he does not. See Part III, *ante*.

In my view, that second conclusion has broader implications than the majority suggests. The President here seeks to implement treaty provisions in which the United States agrees that the ICJ judgment is binding with respect to the *Avena* parties. Consequently, his actions draw upon his constitutional authority in the area of foreign affairs. In this case, his exercise of that power falls within that middle range of Presidential authority where Congress has neither specifically authorized nor specifically forbidden the Presidential action in question. See *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 637 (1952) (Jackson, J., concurring). At the same time, if the President were to have the authority he asserts here, it would require setting aside a state procedural law.

It is difficult to believe that in the exercise of his Article II powers pursuant to a ratified treaty, the President can *never* take action that would result in setting aside state law. Cf. *United States* v. *Pink*, 315 U. S. 203, 233 (1942) ("No State can rewrite our foreign policy to conform to its own domestic policies"). Suppose that the President believes it necessary that he implement a treaty provision requiring a prisoner exchange involving someone in state custody in order to avoid a proven military threat. Cf. *Ware*, 3 Dall., at 205.

Or suppose he believes it necessary to secure a foreign consul's treaty-based rights to move freely or to contact an arrested foreign national. Cf. Vienna Convention, Art. 34, 21 U. S. T., at 98. Does the Constitution require the President in each and every such instance to obtain a special statute authorizing his action? On the other hand, the Constitution must impose significant restrictions upon the President's ability, by invoking Article II treaty-implementation authority, to circumvent ordinary legislative processes and to preempt state law as he does so.

Previously this Court has said little about this question. It has held that the President has a fair amount of authority to make and to implement executive agreements, at least in respect to international claims settlement, and that this authority can require contrary state law to be set aside. See, *e. g.*, *Pink*, *supra*, at 223, 230–231, 233–234; *United States* v. *Belmont*, 301 U. S. 324, 326–327 (1937). It has made clear that principles of foreign sovereign immunity trump state law and that the Executive, operating without explicit legislative authority, can assert those principles in state court. See *Ex parte Peru*, 318 U. S. 578, 588 (1943). It has also made clear that the Executive has inherent power to bring a lawsuit "to carry out treaty obligations." *Sanitary Dist. of Chicago* v. *United States*, 266 U. S. 405, 425, 426 (1925). But it has reserved judgment as to "the scope of the President's power to preempt state law pursuant to authority delegated by . . . a ratified treaty"—a fact that helps to explain the majority's inability to find support in precedent for its own conclusions. *Barclays Bank PLC* v. *Franchise Tax Bd. of Cal.*, 512 U. S. 298, 329 (1994).

Given the Court's comparative lack of expertise in foreign affairs; given the importance of the Nation's foreign relations; given the difficulty of finding the proper constitutional balance among state and federal, executive and legislative, powers in such matters; and given the likely future importance of this Court's efforts to do so, I would very much

hesitate before concluding that the Constitution implicitly sets forth broad prohibitions (or permissions) in this area. Cf. *ante*, at 523, n. 13 (stating that the Court's holding is "limited" by the facts that (1) this treaty is non-self-executing and (2) the judgment of an international tribunal is involved).

I would thus be content to leave the matter in the constitutional shade from which it has emerged. Given my view of this case, I need not answer the question. And I shall not try to do so. That silence, however, cannot be taken as agreement with the majority's Part III conclusion.

IV

The majority's two holdings taken together produce practical anomalies. They unnecessarily complicate the President's foreign affairs task insofar as, for example, they increase the likelihood of Security Council *Avena* enforcement proceedings, of worsening relations with our neighbor Mexico, of precipitating actions by other nations putting at risk American citizens who have the misfortune to be arrested while traveling abroad, or of diminishing our Nation's reputation abroad as a result of our failure to follow the "rule of law" principles that we preach. The holdings also encumber Congress with a task (postratification legislation) that, in respect to many decisions of international tribunals, it may not want and which it may find difficult to execute. See *supra*, at 560 (discussing the problems with case-by-case legislation). At the same time, insofar as today's holdings make it more difficult to enforce the judgments of international tribunals, including technical non-politically-controversial judgments, those holdings weaken that rule of law for which our Constitution stands. Cf. Hughes Defends Foreign Policies in Plea for Lodge, N. Y. Times, Oct. 31, 1922, p. 1, col. 1, p. 4, col. 1 (then-Secretary of State Charles Evans Hughes stating that "we favor, and always have favored, an inter-

national court of justice for the determination according to judicial standards of justiciable international disputes"); Mr. Root Discusses International Problems, N. Y. Times, July 9, 1916, section 6, book review p. 276 (former Secretary of State and U. S. Senator Elihu Root stating that "'a court of international justice with a general obligation to submit all justiciable questions to its jurisdiction and to abide by its judgment is a primary requisite to any real restraint of law'"); Mills, The Obligation of the United States Toward the World Court, 114 Annals of the American Academy of Political and Social Science 128 (1924) (Congressman Ogden Mills describing the efforts of then-Secretary of State John Hay, and others, to establish a world court, and the support therefor).

These institutional considerations make it difficult to reconcile the majority's holdings with the workable Constitution that the Founders envisaged. They reinforce the importance, in practice and in principle, of asking Chief Justice Marshall's question: Does a treaty provision address the "Judicial" Branch rather than the "Political Branches" of Government. See *Foster*, 2 Pet., at 314. And they show the wisdom of the well-established precedent that indicates that the answer to the question here is "yes." See Parts I and II, *supra*.

V

In sum, a strong line of precedent, likely reflecting the views of the Founders, indicates that the treaty provisions before us and the judgment of the International Court of Justice address themselves to the Judicial Branch and consequently are self-executing. In reaching a contrary conclusion, the Court has failed to take proper account of that precedent and, as a result, the Nation may well break its word even though the President seeks to live up to that word and Congress has done nothing to suggest the contrary.

For the reasons set forth, I respectfully dissent.

APPENDIXES

A

Examples of Supreme Court decisions considering a treaty provision to be self-executing. Parentheticals indicate the subject matter; an asterisk indicates that the Court applied the provision to invalidate a contrary state or territorial law or policy.

1. *Olympic Airways* v. *Husain*, 540 U. S. 644, 649, 657 (2004) (air-carrier liability)
2. *El Al Israel Airlines, Ltd.* v. *Tsui Yuan Tseng*, 525 U. S. 155, 161–163, 176 (1999) (same)*
3. *Zicherman* v. *Korean Air Lines Co.*, 516 U. S. 217, 221, 231 (1996) (same)
4. *Société Nationale Industrielle Aérospatiale* v. *United States Dist. Court for Southern Dist. of Iowa*, 482 U. S. 522, 524, 533 (1987) (international discovery rules)
5. *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U. S. 176, 181, 189–190 (1982) (employment practices)
6. *Trans World Airlines, Inc.* v. *Franklin Mint Corp.*, 466 U. S. 243, 245, 252 (1984) (air-carrier liability)
7. *Kolovrat* v. *Oregon*, 366 U. S. 187, 191, n. 6, 198 (1961) (property rights and inheritance)*
8. *Clark* v. *Allen*, 331 U. S. 503, 507–508, 517–518 (1947) (same)*
9. *Bacardi Corp. of America* v. *Domenech*, 311 U. S. 150, 160, and n. 9, 161 (1940) (trademark)*
10. *Todok* v. *Union State Bank of Harvard*, 281 U. S. 449, 453, 455 (1930) (property rights and inheritance)
11. *Nielsen* v. *Johnson*, 279 U. S. 47, 50, 58 (1929) (taxation)*
12. *Jordan* v. *Tashiro*, 278 U. S. 123, 126–127, n. 1, 128–129 (1928) (trade and commerce)
13. *Asakura* v. *Seattle*, 265 U. S. 332, 340, 343–344 (1924) (same)*

14. *Maiorano* v. *Baltimore & Ohio R. Co.*, 213 U. S. 268, 273–274 (1909) (travel, trade, access to courts)
15. *Johnson* v. *Browne*, 205 U. S. 309, 317–322 (1907) (extradition)
16. *Geofroy* v. *Riggs*, 133 U. S. 258, 267–268, 273 (1890) (inheritance)*
17. *Wildenhus's Case*, 120 U. S. 1, 11, 17–18 (1887) (criminal jurisdiction)
18. *United States* v. *Rauscher*, 119 U. S. 407, 410–411, 429–430 (1886) (extradition)
19. *Hauenstein* v. *Lynham*, 100 U. S. 483, 485–486, 490–491 (1880) (property rights and inheritance)*
20. *American Ins. Co.* v. *356 Bales of Cotton*, 1 Pet. 511, 542 (1828) (property)
21. *United States* v. *Percheman*, 7 Pet. 51, 88–89 (1833) (land ownership)
22. *United States* v. *Arredondo*, 6 Pet. 691, 697, 749 (1832) (same)
23. *Orr* v. *Hodgson*, 4 Wheat. 453, 462–465 (1819) (same)*
24. *Chirac* v. *Lessee of Chirac*, 2 Wheat. 259, 270–271, 274, 275 (1817) (land ownership and inheritance)*
25. *Fairfax's Devisee* v. *Hunter's Lessee*, 7 Cranch 603, 626–627 (1813) (land ownership)
26. *Hannay* v. *Eve*, 3 Cranch 242, 248 (1806) (monetary debts)
27. *Hopkirk* v. *Bell*, 3 Cranch 454, 457–458 (1806) (same)*
28. *Ware* v. *Hylton*, 3 Dall. 199, 203–204, 285 (1796) (same)*
29. *Georgia* v. *Brailsford*, 3 Dall. 1, 4 (1794) (same)

B

United States treaties in force containing provisions for the submission of treaty-based disputes to the International Court of Justice. Parentheticals indicate subject matters

that can be the subject of ICJ adjudication that are of the sort that this Court has found self-executing.

Economic Cooperation Agreements

1. Economic Aid Agreement Between the United States of America and Spain, Sept. 26, 1953, [1953] 4 U. S. T. 1903, 1920–1921, T. I. A. S. No. 2851 (property and contract)
2. Agreement for Economic Assistance Between the Government of the United States of America and the Government of Israel Pursuant to the General Agreement for Technical Cooperation, May 9, 1952, [1952] 3 U. S. T. 4174, 4177, T. I. A. S. No. 2561 (same)
3. Economic Cooperation Agreement Between the United States of America and Portugal, 62 Stat. 2861–2862 (1948) (same)
4. Economic Cooperation Agreement Between the United States of America and the United Kingdom, 62 Stat. 2604 (1948) (same)
5. Economic Cooperation Agreement Between the United States of America and the Republic of Turkey, 62 Stat. 2572 (1948) (same)
6. Economic Cooperation Agreement Between the United States of America and Sweden, 62 Stat. 2557 (1948) (same)
7. Economic Cooperation Agreement Between the United States of America and Norway, 62 Stat. 2531 (1948) (same)
8. Economic Cooperation Agreement Between the Governments of the United States of America and the Kingdom of the Netherlands, 62 Stat. 2500 (1948) (same)
9. Economic Cooperation Agreement Between the United States of America and the Grand Duchy of Luxembourg, 62 Stat. 2468 (1948) (same)

10. Economic Cooperation Agreement Between the United States of America and Italy, 62 Stat. 2440 (1948) (same)
11. Economic Cooperation Agreement Between the United States of America and Iceland, 62 Stat. 2390 (1948) (same)
12. Economic Cooperation Agreement Between the United States of America and Greece, 62 Stat. 2344 (1948) (same)
13. Economic Cooperation Agreement Between the United States of America and France, 62 Stat. 2232, 2233 (1948) (same)
14. Economic Cooperation Agreement Between the United States of America and Denmark, 62 Stat. 2214 (1948) (same)
15. Economic Cooperation Agreement Between the United States of America and the Kingdom of Belgium, 62 Stat. 2190 (1948) (same)
16. Economic Cooperation Agreement Between the United States of America and Austria, 62 Stat. 2144 (1948) (same)

Bilateral Consular Conventions

1. Consular Convention Between the United States of America and the Kingdom of Belgium, Sept. 2, 1969, [1974] 25 U. S. T. 41, 47–49, 56–57, 60–61, 75, T. I. A. S. No. 7775 (domestic-court jurisdiction and authority over consular officers, taxation of consular officers, consular notification)
2. Consular Convention Between the United States of America and the Republic of Korea, Jan. 8, 1963, [1963] 14 U. S. T. 1637, 1641, 1644–1648, T. I. A. S. No. 5469 (same)

Friendship, Commerce, and Navigation Treaties

1. Treaty of Amity and Economic Relations Between the United States of America and the Togolese Re-

public, Feb. 8, 1966, [1967] 18 U. S. T. 1, 3–4, 10, T. I. A. S. No. 6193 (contracts and property)

2. Treaty of Friendship, Establishment and Navigation Between the United States of America and the Kingdom of Belgium, Feb. 21, 1961, [1963] 14 U. S. T. 1284, 1290–1291, 1307, T. I. A. S. No. 5432 (same)
3. Treaty of Friendship, Establishment and Navigation Between the United States of America and the Grand Duchy of Luxembourg, Feb. 23, 1962, [1963] 14 U. S. T. 251, 254–255, 262, T. I. A. S. No. 5306 (consular notification; contracts and property)
4. Treaty of Friendship, Commerce and Navigation Between the United States of America and the Kingdom of Denmark, Oct. 1, 1951, [1961] 12 U. S. T. 908, 912–913, 935, T. I. A. S. No. 4797 (contracts and property)
5. Treaty of Friendship and Commerce Between the United States of America and Pakistan, Nov. 12, 1959, [1961] 12 U. S. T. 110, 113, 123, T. I. A. S. No. 4683 (same)
6. Convention of Establishment Between the United States of America and France, Nov. 25, 1959, [1960] 11 U. S. T. 2398, 2401–2403, 2417, T. I. A. S. No. 4625 (same)
7. Treaty of Friendship, Commerce and Navigation Between the United States of America and the Republic of Korea, Nov. 28, 1956, [1957] 8 U. S. T. 2217, 2221–2222, 2233, T. I. A. S. No. 3947 (same)
8. Treaty of Friendship, Commerce and Navigation Between the United States of America and the Kingdom of the Netherlands, Mar. 27, 1956, [1957] 8 U. S. T. 2043, 2047–2050, 2082–2083, T. I. A. S. No. 3942 (freedom to travel, consular notification, contracts and property)
9. Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, Aug. 15, 1955, [1957] 8 U. S. T. 899, 903, 907,

913, T. I. A. S. No. 3853 (property and freedom of commerce)

10. Treaty of Friendship, Commerce and Navigation Between the United States of America and the Federal Republic of Germany, Oct. 29, 1954, [1956] 7 U. S. T. 1839, 1844–1846, 1867, T. I. A. S. No. 3593 (property and contract)
11. Treaty of Friendship, Commerce and Navigation Between the United States of America and Greece, Aug. 3, 1951, [1954] 5 U. S. T. 1829, 1841–1847, 1913–1915, T. I. A. S. No. 3057 (same)
12. Treaty of Friendship, Commerce and Navigation Between the United States of America and Israel, Aug. 23, 1951, [1954] 5 U. S. T. 550, 555–556, 575, T. I. A. S. No. 2948 (same)
13. Treaty of Amity and Economic Relations Between the United States of America and Ethiopia, Sept. 7, 1951, [1953] 4 U. S. T. 2134, 2141, 2145, 2147, T. I. A. S. No. 2864 (property and freedom of commerce)
14. Treaty of Friendship, Commerce and Navigation Between the United States of America and Japan, Apr. 2, 1953, [1953] 4 U. S. T. 2063, 2067–2069, 2080, T. I. A. S. No. 2863 (property and contract)
15. Treaty of Friendship, Commerce and Navigation Between the United States of America and Ireland, Jan. 21, 1950, [1950] 1 U. S. T. 785, 792–794, 801, T. I. A. S. No. 2155 (same)
16. Treaty of Friendship, Commerce and Navigation Between the United States of America and the Italian Republic, 63 Stat. 2262, 2284, 2294 (1948) (property and freedom of commerce)

Multilateral Conventions

1. Patent Cooperation Treaty, June 19, 1970, [1976–77] 28 U. S. T. 7645, 7652–7676, 7708, T. I. A. S. No. 8733 (patents)

2. Universal Copyright Convention, July 24, 1971, [1974] 25 U. S. T. 1341, 1345, 1366, T. I. A. S. No. 7868 (copyright)
3. Vienna Convention on Diplomatic Relations and the Optional Protocol Concerning the Compulsory Settlement of Disputes, Apr. 18, 1961, [1972] 23 U. S. T. 3227, 3240–3243, 3375, T. I. A. S. No. 7502 (rights of diplomats in foreign nations)
4. Paris Convention for the Protection of Industrial Property, July 14, 1967, [1970] 21 U. S. T. 1583, 1631–1639, 1665–1666, T. I. A. S. No. 6923 (patents)
5. Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, [1970] 21 U. S. T. 1418, 1426–1428, 1430–1432, 1438–1440, T. I. A. S. No. 6900 (rights of U. N. diplomats and officials)
6. Convention on Offences and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, [1969] 20 U. S. T. 2941, 2943–2947, 2952, T. I. A. S. No. 6768 (airlines' treatment of passengers)
7. Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character, July 15, 1949, [1966] 17 U. S. T. 1578, 1581, 1586, T. I. A. S. No. 6116 (customs duties on importation of films and recordings)
8. Universal Copyright Convention, Sept. 6, 1952, [1955] 6 U. S. T. 2731, 2733–2739, 2743, T. I. A. S. No. 3324 (copyright)
9. Treaty of Peace With Japan, Sept. 8, 1951, [1952] 3 U. S. T. 3169, 3181–3183, 3188, T. I. A. S. No. 2490 (property)
10. Convention on Road Traffic, Sept. 19, 1949, [1952] 3 U. S. T. 3008, 3012–3017, 3020, T. I. A. S. No. 2487 (rights and obligations of drivers)

11. Convention on International Civil Aviation, 61 Stat. 1204 (1944) (seizure of aircraft to satisfy patent claims)

Syllabus

HALL STREET ASSOCIATES, L. L. C. *v.* MATTEL, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06–989. Argued November 7, 2007—Decided March 25, 2008

The Federal Arbitration Act (FAA), 9 U. S. C. §§9–11, provides expedited judicial review to confirm, vacate, or modify arbitration awards. Under §9, a court "must" confirm an award "unless" it is vacated, modified, or corrected "as prescribed" in §§10 and 11. Section 10 lists grounds for vacating an award, including where the award was procured by "corruption," "fraud," or "undue means," and where the arbitrators were "guilty of misconduct," or "exceeded their powers." Under §11, the grounds for modifying or correcting an award include "evident material miscalculation," "evident material mistake," and "imperfect[ions] in [a] matter of form not affecting the merits."

After a bench trial sustained respondent tenant's (Mattel) right to terminate its lease with petitioner landlord (Hall Street), the parties proposed to arbitrate Hall Street's claim for indemnification of the costs of cleaning up the lease site. The District Court approved, and entered as an order, the parties' arbitration agreement, which, *inter alia*, required the court to vacate, modify, or correct any award if the arbitrator's conclusions of law were erroneous. The arbitrator decided for Mattel, but the District Court vacated the award for legal error, expressly invoking the agreement's legal-error review standard and citing the Ninth Circuit's *LaPine* decision for the proposition that the FAA allows parties to draft a contract dictating an alternative review standard. On remand, the arbitrator ruled for Hall Street, and the District Court largely upheld the award, again applying the parties' stipulated review standard. The Ninth Circuit reversed, holding the case controlled by its *Kyocera* decision, which had overruled *LaPine* on the ground that arbitration-agreement terms fixing the mode of judicial review are unenforceable, given the exclusive grounds for vacatur and modification provided by FAA §§10 and 11.

Held:

1. The FAA's grounds for prompt vacatur and modification of awards are exclusive for parties seeking expedited review under the FAA. The Court rejects Hall Street's two arguments to the contrary. First, Hall Street submits that expandable judicial review has been accepted as the law since *Wilko* v. *Swan*, 346 U. S. 427. Although a *Wilko* statement—"the interpretations of the law by the arbitrators *in contrast to*

Syllabus

manifest disregard are not subject, in the federal courts, to judicial review for error in interpretation," *id.*, at 436–437 (emphasis added)—arguably favors Hall Street's position, arguable is as far as it goes. Quite apart from the leap from a supposed judicial expansion by interpretation to a private expansion by contract, Hall Street overlooks the fact that the *Wilko* statement expressly rejects just what Hall Street asks for here, general review for an arbitrator's legal errors. Moreover, *Wilko*'s phrasing is too vague to support Hall Street's interpretation, since "manifest disregard" can be read as merely referring to the § 10 grounds collectively, rather than adding to them, see, *e. g.*, *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 656, or as shorthand for the § 10 subsections authorizing vacatur when arbitrators were "guilty of misconduct" or "exceeded their powers." Second, Hall Street says that the agreement to review for legal error ought to prevail simply because arbitration is a creature of contract, and the FAA is motivated by a congressional desire to enforce such agreements. *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 220. This argument comes up short because, although there may be a general policy favoring arbitration, the FAA has textual features at odds with enforcing a contract to expand judicial review once the arbitration is over. Even assuming §§ 10 and 11 could be supplemented to some extent, it would stretch basic interpretive principles to expand their uniformly narrow stated grounds to the point of legal review generally. But § 9 makes evident that expanding § 10's and § 11's detailed categories at all would rub too much against the grain: § 9 carries no hint of flexibility in unequivocally telling courts that they "must" confirm an arbitral award, "unless" it is vacated or modified "as prescribed" by §§ 10 and 11. Instead of fighting the text, it makes more sense to see §§ 9–11 as the substance of a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway. *Id.*, at 217, 219, distinguished. Pp. 584–589.

2. In holding the § 10 and § 11 grounds exclusive with regard to enforcement under the FAA's expedited judicial review mechanisms, this Court decides nothing about other possible avenues for judicial enforcement of awards. Accordingly, this case must be remanded for consideration of independent issues. Because the arbitration agreement was entered into during litigation, was submitted to the District Court as a request to deviate from the standard sequence of litigation procedure, and was adopted by the court as an order, there is some question whether it should be treated as an exercise of the District Court's authority to manage its cases under Federal Rule of Civil Procedure 16. This Court ordered supplemental briefing on the issue, but the parties' supplemental arguments implicate issues that have not been considered

previously in this litigation and could not be well addressed for the first time here. Thus, the Court expresses no opinion on these matters beyond leaving them open for Hall Street to press on remand. Pp. 590–592.

196 Fed. Appx. 476, vacated and remanded.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, GINSBURG, and ALITO, JJ., joined, and in which SCALIA, J., joined as to all but footnote 7. STEVENS, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 592. BREYER, J., filed a dissenting opinion, *post*, p. 596.

Carter G. Phillips argued the cause for petitioner. On the briefs were *Michael T. Garone*, *Michael A. Cohen*, *Jay T. Waldron*, *Sara Kobak*, and *Virginia A. Seitz*.

Beth S. Brinkmann argued the cause for respondent. With her on the brief were *Drew S. Days III*, *Seth M. Galanter*, *Ketanji Brown Jackson*, *Shirley M. Hufstedler*, and *Peter Hsiao*.*

JUSTICE SOUTER delivered the opinion of the Court.†

The Federal Arbitration Act (FAA or Act), 9 U. S. C. §1 *et seq.*, provides for expedited judicial review to confirm, vacate, or modify arbitration awards. §§9–11 (2006 ed.).†† The question here is whether statutory grounds for prompt vacatur and modification may be supplemented by contract. We hold that the statutory grounds are exclusive.

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*Briefs of *amici curiae* urging reversal were filed for CTIA–The Wireless Association by *Eran M. Tager*, *David M. Gossett*, and *Michael F. Altschul*; for the New England Legal Foundation et al. by *Benjamin G. Robbins* and *Martin J. Newhouse*; and for the Pacific Legal Foundation by *Deborah J. La Fetra* and *Timothy Sandefur*.

Eric P. Tuchmann, *William K. Slate II*, and *David W. Rivkin* filed a brief for the American Arbitration Association as *amicus curiae* urging affirmance.

Mark D. Beckett filed a brief for the United States Council for International Business as *amicus curiae*.

†JUSTICE SCALIA joins all but footnote 7 of this opinion.

††All undated references in this case to 9 U. S. C. are to the 2006 edition.

I

This case began as a lease dispute between landlord, petitioner Hall Street Associates, L. L. C., and tenant, respondent Mattel, Inc. The property was used for many years as a manufacturing site, and the leases provided that the tenant would indemnify the landlord for any costs resulting from the failure of the tenant or its predecessor lessees to follow environmental laws while using the premises. App. 88–89.

Tests of the property's well water in 1998 showed high levels of trichloroethylene (TCE), the apparent residue of manufacturing discharges by Mattel's predecessors between 1951 and 1980. After the Oregon Department of Environmental Quality (DEQ) discovered even more pollutants, Mattel stopped drawing from the well and, along with one of its predecessors, signed a consent order with the DEQ providing for cleanup of the site.

After Mattel gave notice of intent to terminate the lease in 2001, Hall Street filed this suit, contesting Mattel's right to vacate on the date it gave, and claiming that the lease obliged Mattel to indemnify Hall Street for costs of cleaning up the TCE, among other things. Following a bench trial before the United States District Court for the District of Oregon, Mattel won on the termination issue, and after an unsuccessful try at mediating the indemnification claim, the parties proposed to submit to arbitration. The District Court was amenable, and the parties drew up an arbitration agreement, which the court approved and entered as an order. One paragraph of the agreement provided that

> "[t]he United States District Court for the District of Oregon may enter judgment upon any award, either by confirming the award or by vacating, modifying or correcting the award. The Court shall vacate, modify or correct any award: (i) where the arbitrator's findings of facts are not supported by substantial evidence, or (ii) where the arbitrator's conclusions of law are erroneous." App. to Pet. for Cert. 16a.

Arbitration took place, and the arbitrator decided for Mattel. In particular, he held that no indemnification was due, because the lease obligation to follow all applicable federal, state, and local environmental laws did not require compliance with the testing requirements of the Oregon Drinking Water Quality Act (Oregon Act); that Act the arbitrator characterized as dealing with human health as distinct from environmental contamination.

Hall Street then filed a District Court Motion for Order Vacating, Modifying And/Or Correcting Arbitration Accord, App. 4, on the ground that failing to treat the Oregon Act as an applicable environmental law under the terms of the lease was legal error. The District Court agreed, vacated the award, and remanded for further consideration by the arbitrator. The court expressly invoked the standard of review chosen by the parties in the arbitration agreement, which included review for legal error, and cited *LaPine Technology Corp.* v. *Kyocera Corp.*, 130 F. 3d 884, 889 (CA9 1997), for the proposition that the FAA leaves the parties "free . . . to draft a contract that sets rules for arbitration and dictates an alternative standard of review." App. to Pet. for Cert. 46a.

On remand, the arbitrator followed the District Court's ruling that the Oregon Act was an applicable environmental law and amended the decision to favor Hall Street. This time, each party sought modification, and again the District Court applied the parties' stipulated standard of review for legal error, correcting the arbitrator's calculation of interest but otherwise upholding the award. Each party then appealed to the Court of Appeals for the Ninth Circuit, where Mattel switched horses and contended that the Ninth Circuit's recent en banc action overruling *LaPine* in *Kyocera Corp.* v. *Prudential-Bache Trade Servs., Inc.*, 341 F. 3d 987, 1000 (2003), left the arbitration agreement's provision for judicial review of legal error unenforceable. Hall Street countered that *Kyocera* (the later one) was distinguishable, and

that the agreement's judicial review provision was not severable from the submission to arbitration.

The Ninth Circuit reversed in favor of Mattel in holding that, "[u]nder *Kyocera* the terms of the arbitration agreement controlling the mode of judicial review are unenforceable and severable." 113 Fed. Appx. 272, 272–273 (2004). The Circuit instructed the District Court on remand to

> "return to the application to confirm the original arbitration award (not the subsequent award revised after reversal), and . . . confirm that award, unless . . . the award should be vacated on the grounds allowable under 9 U. S. C. § 10, or modified or corrected under the grounds allowable under 9 U. S. C. § 11." *Id.*, at 273.

After the District Court again held for Hall Street and the Ninth Circuit again reversed,[1] we granted certiorari to decide whether the grounds for vacatur and modification provided by §§ 10 and 11 of the FAA are exclusive. 550 U. S. 968 (2007). We agree with the Ninth Circuit that they are, but vacate and remand for consideration of independent issues.

II

Congress enacted the FAA to replace judicial indisposition to arbitration with a "national policy favoring [it] and plac[ing] arbitration agreements on equal footing with all other contracts." *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440, 443 (2006). As for jurisdiction over controversies touching arbitration, the Act does nothing, being "something of an anomaly in the field of federal-court jurisdiction"

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[1] On remand, the District Court vacated the arbitration award because it supposedly rested on an implausible interpretation of the lease and thus exceeded the arbitrator's powers, in violation of 9 U. S. C. § 10. Mattel appealed, and the Ninth Circuit reversed, holding that implausibility is not a valid ground for vacating or correcting an award under § 10 or § 11. 196 Fed. Appx. 476, 477–478 (2006).

in bestowing no federal jurisdiction but rather requiring an independent jurisdictional basis. *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 25, n. 32 (1983); see, *e. g.*, 9 U. S. C. § 4 (providing for action by a federal district court "which, save for such [arbitration] agreement, would have jurisdiction under title 28").[2] But in cases falling within a court's jurisdiction, the Act makes contracts to arbitrate "valid, irrevocable, and enforceable," so long as their subject involves "commerce." § 2. And this is so whether an agreement has a broad reach or goes just to one dispute, and whether enforcement be sought in state court or federal. See *ibid.*; *Southland Corp.* v. *Keating*, 465 U. S. 1, 15–16 (1984).

The Act also supplies mechanisms for enforcing arbitration awards: a judicial decree confirming an award, an order vacating it, or an order modifying or correcting it. §§ 9–11. An application for any of these orders will get streamlined treatment as a motion, obviating the separate contract action that would usually be necessary to enforce or tinker with an arbitral award in court.[3] § 6. Under the terms of § 9, a court "must" confirm an arbitration award "unless" it is vacated, modified, or corrected "as prescribed" in §§ 10 and 11. Section 10 lists grounds for vacating an award, while § 11 names those for modifying or correcting one.[4]

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[2] Because the FAA is not jurisdictional, there is no merit in the argument that enforcing the arbitration agreement's judicial review provision would create federal jurisdiction by private contract. The issue is entirely about the scope of judicial review permissible under the FAA.

[3] Unlike JUSTICE STEVENS, see *post*, at 595 (dissenting opinion), we understand this expedited review to be what each of the parties understood it was seeking from time to time; neither party's pleadings were amended to raise an independent state-law contract claim or defense specific to the arbitration agreement.

[4] Title 9 U. S. C. § 10(a) (2000 ed., Supp. V) provides in part:

"In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

The Courts of Appeals have split over the exclusiveness of these statutory grounds when parties take the FAA shortcut to confirm, vacate, or modify an award, with some saying the recitations are exclusive, and others regarding them as mere threshold provisions open to expansion by agreement.[5]

"(1) where the award was procured by corruption, fraud, or undue means;

"(2) where there was evident partiality or corruption in the arbitrators, or either of them;

"(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

"(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

Title 9 U. S. C. § 11 (2000 ed.) provides:

"In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

"(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

"(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

"(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

"The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties."

[5]The Ninth and Tenth Circuits have held that parties may not contract for expanded judicial review. See *Kyocera Corp.* v. *Prudential-Bache Trade Servs., Inc.*, 341 F. 3d 987, 1000 (CA9 2003) (en banc); *Bowen* v. *Amoco Pipeline Co.*, 254 F. 3d 925, 936 (CA10 2001). The First, Third, Fifth, and Sixth Circuits, meanwhile, have held that parties may so contract. See *Puerto Rico Tel. Co.* v. *U. S. Phone Mfg. Corp.*, 427 F. 3d 21, 31 (CA1 2005); *Jacada (Europe), Ltd.* v. *International Marketing Strategies, Inc.*, 401 F. 3d 701, 710 (CA6 2005); *Roadway Package System, Inc.* v. *Kayser*, 257 F. 3d 287, 288 (CA3 2001); *Gateway Technologies, Inc.* v. *MCI Telecommunications Corp.*, 64 F. 3d 993, 997 (CA5 1995). The Fourth Circuit has taken the latter side of the split in an unpublished

As mentioned already, when this litigation started, the Ninth Circuit was on the threshold side of the split, see *LaPine*, 130 F. 3d, at 889, from which it later departed en banc in favor of the exclusivity view, see *Kyocera*, 341 F. 3d, at 1000, which it followed in this case, see 113 Fed. Appx., at 273. We now hold that §§ 10 and 11 respectively provide the FAA's exclusive grounds for expedited vacatur and modification.

III

Hall Street makes two main efforts to show that the grounds set out for vacating or modifying an award are not exclusive, taking the position, first, that expandable judicial review authority has been accepted as the law since *Wilko* v. *Swan*, 346 U. S. 427 (1953). This, however, was not what *Wilko* decided, which was that § 14 of the Securities Act of 1933 voided any agreement to arbitrate claims of violations of that Act, see *id.*, at 437–438, a holding since overruled by *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477, 484 (1989). Although it is true that the Court's discussion includes some language arguably favoring Hall Street's position, arguable is as far as it goes.

The *Wilko* Court was explaining that arbitration would undercut the Securities Act's buyer protections when it remarked (citing FAA § 10) that "[p]ower to vacate an [arbitration] award is limited," 346 U. S., at 436, and went on to say that "the interpretations of the law by the arbitrators in contrast to manifest disregard [of the law] are not subject, in the federal courts, to judicial review for error in interpretation," *id.*, at 436–437. Hall Street reads this statement as recognizing "manifest disregard of the law" as a further ground for vacatur on top of those listed in § 10, and some Circuits have read it the same way. See, *e. g.*, *McCarthy* v.

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opinion, see *Syncor Int'l Corp.* v. *McLeland*, 120 F. 3d 262 (1997), while the Eighth Circuit has expressed agreement with the former side in dicta, see *UHC Management Co.* v. *Computer Sciences Corp.*, 148 F. 3d 992, 997–998 (1998).

Citigroup Global Markets, Inc., 463 F. 3d 87, 91 (CA1 2006); *Hoeft* v. *MVL Group, Inc.*, 343 F. 3d 57, 64 (CA2 2003); *Prestige Ford* v. *Ford Dealer Computer Servs., Inc.*, 324 F. 3d 391, 395–396 (CA5 2003); *Scott* v. *Prudential Securities, Inc.*, 141 F. 3d 1007, 1017 (CA11 1998). Hall Street sees this supposed addition to § 10 as the camel's nose: if judges can add grounds to vacate (or modify), so can contracting parties.

But this is too much for *Wilko* to bear. Quite apart from its leap from a supposed judicial expansion by interpretation to a private expansion by contract, Hall Street overlooks the fact that the statement it relies on expressly rejects just what Hall Street asks for here, general review for an arbitrator's legal errors. Then there is the vagueness of *Wilko*'s phrasing. Maybe the term "manifest disregard" was meant to name a new ground for review, but maybe it merely referred to the § 10 grounds collectively, rather than adding to them. See, *e. g.*, *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 656 (1985) (STEVENS, J., dissenting) ("Arbitration awards are only reviewable for manifest disregard of the law, 9 U. S. C. §§ 10, 207"); *I/S Stavborg* v. *National Metal Converters, Inc.*, 500 F. 2d 424, 431 (CA2 1974). Or, as some courts have thought, "manifest disregard" may have been shorthand for § 10(a)(3) or § 10(a)(4), the paragraphs authorizing vacatur when the arbitrators were "guilty of misconduct" or "exceeded their powers." See, *e. g.*, *Kyocera*, *supra*, at 997. We, when speaking as a Court, have merely taken the *Wilko* language as we found it, without embellishment, see *First Options of Chicago, Inc.* v. *Kaplan*, 514 U. S. 938, 942 (1995), and now that its meaning is implicated, we see no reason to accord it the significance that Hall Street urges.

Second, Hall Street says that the agreement to review for legal error ought to prevail simply because arbitration is a creature of contract, and the FAA is "motivated, first and foremost, by a congressional desire to enforce agreements into which parties ha[ve] entered." *Dean Witter Reynolds*

Inc. v. *Byrd*, 470 U. S. 213, 220 (1985). But, again, we think the argument comes up short. Hall Street is certainly right that the FAA lets parties tailor some, even many, features of arbitration by contract, including the way arbitrators are chosen, what their qualifications should be, which issues are arbitrable, along with procedure and choice of substantive law. But to rest this case on the general policy of treating arbitration agreements as enforceable as such would be to beg the question, which is whether the FAA has textual features at odds with enforcing a contract to expand judicial review following the arbitration.

To that particular question we think the answer is yes, that the text compels a reading of the §§ 10 and 11 categories as exclusive. To begin with, even if we assumed §§ 10 and 11 could be supplemented to some extent, it would stretch basic interpretive principles to expand the stated grounds to the point of evidentiary and legal review generally. Sections 10 and 11, after all, address egregious departures from the parties' agreed-upon arbitration: "corruption," "fraud," "evident partiality," "misconduct," "misbehavior," "exceed-[ing] . . . powers," "evident material miscalculation," "evident material mistake," "award[s] upon a matter not submitted"; the only ground with any softer focus is "imperfect[ions]," and a court may correct those only if they go to "[a] matter of form not affecting the merits." Given this emphasis on extreme arbitral conduct, the old rule of *ejusdem generis* has an implicit lesson to teach here. Under that rule, when a statute sets out a series of specific items ending with a general term, that general term is confined to covering subjects comparable to the specifics it follows. Since a general term included in the text is normally so limited, then surely a statute with no textual hook for expansion cannot authorize contracting parties to supplement review for specific instances of outrageous conduct with review for just any legal error. "Fraud" and a mistake of law are not cut from the same cloth.

That aside, expanding the detailed categories would rub too much against the grain of the §9 language, where provision for judicial confirmation carries no hint of flexibility. On application for an order confirming the arbitration award, the court "must grant" the order "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title." There is nothing malleable about "must grant," which unequivocally tells courts to grant confirmation in all cases, except when one of the "prescribed" exceptions applies. This does not sound remotely like a provision meant to tell a court what to do just in case the parties say nothing else.[6]

In fact, anyone who thinks Congress might have understood §9 as a default provision should turn back to §5 for an example of what Congress thought a default provision would look like:

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[6]Hall Street claims that §9 supports its position, because it allows a court to confirm an award only "[i]f the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration." Hall Street argues that this language "expresses Congress's intent that a court must enforce the agreement of the parties as to whether, and under what circumstances, a judgment shall be entered." Reply Brief for Petitioner 5; see also Brief for Petitioner 22–24. It is a peculiar argument, converting agreement as a necessary condition for judicial enforcement into a sufficient condition for a court to bar enforcement. And the text is otherwise problematical for Hall Street: §9 says that if the parties have agreed to judicial enforcement, the court "must grant" confirmation unless grounds for vacatur or modification exist under §10 or §11. The sentence nowhere predicates the court's judicial action on the parties' having agreed to specific standards; if anything, it suggests that, so long as the parties contemplated judicial enforcement, the court must undertake such enforcement under the statutory criteria. In any case, the arbitration agreement here did not specifically predicate entry of judgment on adherence to its judicial review standard. See App. to Pet. for Cert. 15a. To the extent Hall Street argues otherwise, it contests not the meaning of the FAA but the Ninth Circuit's severability analysis, upon which it did not seek certiorari.

> "[i]f in the agreement provision be made for a method of naming or appointing an arbitrator . . . such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, . . . then upon the application of either party to the controversy the court shall designate and appoint an arbitrator . . . ."

"[I]f no method be provided" is a far cry from "must grant . . . unless" in § 9.

Instead of fighting the text, it makes more sense to see the three provisions, §§ 9–11, as substantiating a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway. Any other reading opens the door to the full-bore legal and evidentiary appeals that can "rende[r] informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process," *Kyocera*, 341 F. 3d, at 998; cf. *Ethyl Corp.* v. *United Steelworkers of America*, 768 F. 2d 180, 184 (CA7 1985), and bring arbitration theory to grief in postarbitration process.

Nor is *Dean Witter*, 470 U. S. 213, to the contrary, as Hall Street claims it to be. *Dean Witter* held that state-law claims subject to an agreement to arbitrate could not be remitted to a district court considering a related, nonarbitrable federal claim; the state-law claims were to go to arbitration immediately. *Id.*, at 217. Despite the opinion's language "reject[ing] the suggestion that the overriding goal of the [FAA] was to promote the expeditious resolution of claims," *id.*, at 219, the holding mandated immediate enforcement of an arbitration agreement; the Court was merely trying to explain that the inefficiency and difficulty of conducting simultaneous arbitration and federal-court litigation was not a good enough reason to defer the arbitration, see *id.*, at 217.

When all these arguments based on prior legal authority are done with, Hall Street and Mattel remain at odds over what happens next. Hall Street and its *amici* say parties

will flee from arbitration if expanded review is not open to them. See, *e. g.*, Brief for Petitioner 39; Brief for New England Legal Foundation et al. as *Amici Curiae* 15. One of Mattel's *amici* foresees flight from the courts if it is. See Brief for United States Council for International Business as *Amicus Curiae* 29–30. We do not know who, if anyone, is right, and so cannot say whether the exclusivity reading of the statute is more of a threat to the popularity of arbitrators or to that of courts. But whatever the consequences of our holding, the statutory text gives us no business to expand the statutory grounds.[7]

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[7] The history of the FAA is consistent with our conclusion. The text of the FAA was based upon that of New York's arbitration statute. See S. Rep. No. 536, 68th Cong., 1st Sess., 3 (1924) ("The bill . . . follows the lines of the New York arbitration law enacted in 1920 . . . "). The New York Arbitration Law incorporated pre-existing provisions of the New York Code of Civil Procedure. See 1920 N. Y. Laws p. 806. Section 2373 of the code said that, upon application by a party for a confirmation order, "the court must grant such an order, unless the award is vacated, modified, or corrected, as prescribed by the next two sections." 2 N. Y. Ann. Code Civ. Proc. (Stover 6th ed. 1902) (hereinafter Stover). The subsequent sections gave grounds for vacatur and modification or correction virtually identical to the 9 U. S. C. §§ 10 and 11 grounds. See 2 Stover §§ 2374, 2375.

In a brief submitted to the House and Senate Subcommittees of the Committees on the Judiciary, Julius Henry Cohen, one of the primary drafters of both the 1920 New York Act and the proposed FAA, said, "The grounds for vacating, modifying, or correcting an award are limited. If the award [meets a condition of § 10], then and then only the award may be vacated. . . . If there was [an error under § 11], then and then only it may be modified or corrected . . . ." Arbitration of Interstate Commercial Disputes, Joint Hearings before the Subcommittees of the Committees on the Judiciary on S. 1005 and H. R. 646, 68th Cong., 1st Sess., 34 (1924). The House Report similarly recognized that an "award may . . . be entered as a judgment, subject to attack by the other party for fraud and corruption and similar undue influence, or for palpable error in form." H. R. Rep. No. 96, 68th Cong., 1st Sess., 2 (1924).

In a contemporaneous campaign for the promulgation of a uniform state arbitration law, Cohen contrasted the New York Act with the Illinois Arbitration and Awards Act of 1917, which required an arbitrator, at the re-

IV

In holding that §§ 10 and 11 provide exclusive regimes for the review provided by the statute, we do not purport to say that they exclude more searching review based on authority outside the statute as well. The FAA is not the only way into court for parties wanting review of arbitration awards: they may contemplate enforcement under state statutory or common law, for example, where judicial review of different scope is arguable. But here we speak only to the scope of the expeditious judicial review under §§ 9, 10, and 11, deciding nothing about other possible avenues for judicial enforcement of arbitration awards.

Although one such avenue is now claimed to be revealed in the procedural history of this case, no claim to it was presented when the case arrived on our doorstep, and no reason then appeared to us for treating this as anything but an FAA case. There was never any question about meeting the FAA § 2 requirement that the leases from which the dispute arose be contracts "involving commerce." 9 U. S. C. § 2; see *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265, 277 (1995) (§ 2 "exercise[s] Congress' commerce power to the full"). Nor is there any doubt now that the parties at least had the FAA in mind at the outset; the arbitration agreement even incorporates FAA § 7, empowering arbitrators to compel attendance of witnesses. App. to Pet. for Cert. 13a.

While it is true that the agreement does not expressly invoke FAA § 9, § 10, or § 11, and none of the various motions to vacate or modify the award expressly said that the parties were relying on the FAA, the District Court apparently thought it was applying the FAA when it alluded to the Act in quoting *LaPine*, 130 F. 3d, at 889, for the then-unexceptional proposition that "'[f]ederal courts can expand

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quest of either party, to submit any question of law arising during arbitration to judicial determination. See Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings 97–98 (1924); 1917 Ill. Laws p. 203.

their review of an arbitration award beyond the FAA's grounds, when . . . the parties have so agreed.'" App. to Pet. for Cert. 46a. And the Ninth Circuit, for its part, seemed to take it as a given that the District Court's direct and prompt examination of the award depended on the FAA; it found the expanded-review provision unenforceable under *Kyocera* and remanded for confirmation of the original award "unless the district court determines that the award should be vacated on the grounds allowable under 9 U. S. C. § 10, or modified or corrected under the grounds allowable under 9 U. S. C. § 11." 113 Fed. Appx., at 273. In the petition for certiorari and the principal briefing before us, the parties acted on the same premise. See, *e. g.*, Pet. for Cert. 27 ("This Court should accept review to resolve this important issue of statutory construction under the FAA"); Brief for Petitioner 16 ("Because arbitration provisions providing for judicial review of arbitration awards for legal error are consistent with the goals and policies of the FAA and employ a standard of review which district courts regularly apply in a variety of contexts, those provisions are entitled to enforcement under the FAA").

One unusual feature, however, prompted some of us to question whether the case should be approached another way. The arbitration agreement was entered into in the course of district-court litigation, was submitted to the District Court as a request to deviate from the standard sequence of trial procedure, and was adopted by the District Court as an order. See App. 46–47; App. to Pet. for Cert. 4a–8a. Hence a question raised by this Court at oral argument: should the agreement be treated as an exercise of the District Court's authority to manage its cases under Federal Rule of Civil Procedure 16? See, *e. g.*, Tr. of Oral Arg. 11–12. Supplemental briefing at the Court's behest joined issue on the question, and it appears that Hall Street suggested something along these lines in the Court of Appeals, which did not address the suggestion.

We are, however, in no position to address the question now, beyond noting the claim of relevant case management authority independent of the FAA. The parties' supplemental arguments on the subject in this Court implicate issues of waiver and the relation of the FAA both to Rule 16 and the Alternative Dispute Resolution Act of 1998, 28 U. S. C. § 651 *et seq.*, none of which has been considered previously in this litigation, or could be well addressed for the first time here. We express no opinion on these matters beyond leaving them open for Hall Street to press on remand. If the Court of Appeals finds they are open, the court may consider whether the District Court's authority to manage litigation independently warranted that court's order on the mode of resolving the indemnification issues remaining in this case.

* * *

Although we agree with the Ninth Circuit that the FAA confines its expedited judicial review to the grounds listed in 9 U. S. C. §§ 10 and 11, we vacate the judgment and remand the case for proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE KENNEDY joins, dissenting.

May parties to an ongoing lawsuit agree to submit their dispute to arbitration subject to the caveat that the trial judge should refuse to enforce an award that rests on an erroneous conclusion of law? Prior to Congress' enactment of the Federal Arbitration Act (FAA or Act) in 1925, the answer to that question would surely have been "Yes."[1] Today, however, the Court holds that the FAA does not

[1] See *Kleine* v. *Catara*, 14 F. Cas. 732, 735 (CC Mass. 1814) (Story, J.) ("If the parties wish to reserve the law for the decision of the court, they may stipulate to that effect in the submission; they may restrain or enlarge its operation as they please").

merely authorize the vacation or enforcement of awards on specified grounds, but also forbids enforcement of perfectly reasonable judicial review provisions in arbitration agreements fairly negotiated by the parties and approved by the district court. Because this result conflicts with the primary purpose of the FAA and ignores the historical context in which the Act was passed, I respectfully dissent.

Prior to the passage of the FAA, American courts were generally hostile to arbitration. They refused, with rare exceptions, to order specific enforcement of executory agreements to arbitrate.[2] Section 2 of the FAA responded to this hostility by making written arbitration agreements "valid, irrevocable, and enforceable." 9 U. S. C. §2. This section, which is the centerpiece of the FAA, reflects Congress' main goal in passing the legislation: "to abrogate the general common-law rule against specific enforcement of arbitration agreements," *Southland Corp.* v. *Keating*, 465 U. S. 1, 18 (1984) (STEVENS, J., concurring in part and dissenting in part), and to "ensur[e] that private arbitration agreements are enforced according to their terms," *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 478 (1989). Given this settled understanding of the core purpose of the FAA, the interests favoring enforceability of parties' arbitration agreements are stronger today than before the FAA was enacted. As such, there is more—and certainly not less—reason to give effect to parties' fairly negotiated decisions to provide for judicial review of arbitration awards for errors of law.

Petitioner filed this rather complex action in an Oregon state court. Based on the diverse citizenship of the parties, respondent removed the case to federal court. More than three years later, and after some issues had been resolved,

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[2] See *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109, 120–122 (1924); *The Atlanten*, 252 U. S. 313, 315–316 (1920). Although agreements to arbitrate were not specifically enforceable, courts did award nominal damages for the breach of such contracts.

the parties sought and obtained the District Court's approval of their agreement to arbitrate the remaining issues subject to *de novo* judicial review. They neither requested, nor suggested that the FAA authorized, any "expedited" disposition of their case. Because the arbitrator made a rather glaring error of law, the judge refused to affirm his award until after that error was corrected. The Ninth Circuit reversed.

This Court now agrees with the Ninth Circuit's (most recent) interpretation of the FAA as setting forth the exclusive grounds for modification or vacation of an arbitration award under the statute. As I read the Court's opinion, it identifies two possible reasons for reaching this result: (1) a supposed *quid pro quo* bargain between Congress and litigants that conditions expedited federal enforcement of arbitration awards on acceptance of a statutory limit on the scope of judicial review of such awards; and (2) an assumption that Congress intended to include the words "and no other" in the grounds specified in §§ 10 and 11 for the vacatur and modification of awards. Neither reason is persuasive.

While § 9 of the FAA imposes a 1-year limit on the time in which any party to an arbitration may apply for confirmation of an award, the statute does not require that the application be given expedited treatment. Of course, the premise of the entire statute is an assumption that the arbitration process may be more expeditious and less costly than ordinary litigation, but that is a reason for interpreting the statute liberally to favor the parties' use of arbitration. An unnecessary refusal to enforce a perfectly reasonable category of arbitration agreements defeats the primary purpose of the statute.

That purpose also provides a sufficient response to the Court's reliance on statutory text. It is true that a wooden application of "the old rule of *ejusdem generis*," *ante*, at 586, might support an inference that the categories listed in §§ 10 and 11 are exclusive, but the literal text does not compel that reading—a reading that is flatly inconsistent with the

overriding interest in effectuating the clearly expressed intent of the contracting parties. A listing of grounds that must always be available to contracting parties simply does not speak to the question whether they may agree to additional grounds for judicial review.

Moreover, in light of the historical context and the broader purpose of the FAA, §§10 and 11 are best understood as a shield meant to protect parties from hostile courts, not a sword with which to cut down parties' "valid, irrevocable and enforceable" agreements to arbitrate their disputes subject to judicial review for errors of law.[3] §2.

Even if I thought the narrow issue presented in this case were as debatable as the conflict among the courts of appeals suggests, I would rely on a presumption of overriding importance to resolve the debate and rule in favor of petitioner's position that the FAA permits the statutory grounds for vacatur and modification of an award to be supplemented by contract. A decision "*not to regulate*" the terms of an agreement that does not even arguably offend any public policy whatsoever "is adequately justified by a presumption in favor of freedom." *FCC* v. *Beach Communications, Inc.*, 508 U. S. 307, 320 (1993) (STEVENS, J., concurring in judgment).

Accordingly, while I agree that the judgment of the Court of Appeals must be set aside, and that there may be additional avenues available for judicial enforcement of parties' fairly negotiated review provisions, see, *ante*, at 590–592, I respectfully dissent from the Court's interpretation of the

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[3] In the years before the passage of the FAA, arbitration awards were subject to thorough and broad judicial review. See Cohen & Dayton, The New Federal Arbitration Law, 12 Va. L. Rev. 265, 270–271 (1926); Cullinan, Contracting for an Expanded Scope of Judicial Review in Arbitration Agreements, 51 Vand. L. Rev. 395, 409 (1998). In §§10 and 11 of the FAA, Congress significantly limited the grounds for judicial vacatur or modification of such awards in order to protect arbitration awards from hostile and meddlesome courts.

FAA, and would direct the Court of Appeals to affirm the judgment of the District Court enforcing the arbitrator's final award.

JUSTICE BREYER, dissenting.

The question presented in this case is whether "the Federal Arbitration Act . . . *precludes* a federal court from enforcing" an arbitration agreement that gives the court the power to set aside an arbitration award that embodies an arbitrator's mistake about the law. Pet. for Cert. i. Like the majority and JUSTICE STEVENS, and primarily for the reasons they set forth, I believe that the Act does not *preclude* enforcement of such an agreement. See *ante*, at 590 (opinion of the Court) (The Act "is not the only way into court for parties wanting review of arbitration awards"); *ante*, at 595 (STEVENS, J., dissenting) (The Act is a "shield meant to protect parties from hostile courts, not a sword with which to cut down parties' 'valid, irrevocable and enforceable' agreements to arbitrate their disputes subject to judicial review for errors of law").

At the same time, I see no need to send the case back for further judicial decisionmaking. The agreement here was entered into with the consent of the parties and the approval of the District Court. Aside from the Federal Arbitration Act itself, 9 U. S. C. § 1 *et seq.*, respondent below pointed to no statute, rule, or other relevant public policy that the agreement might violate. The Court has now rejected its argument that the agreement violates the Act, and I would simply remand the case with instructions that the Court of Appeals affirm the District Court's judgment enforcing the arbitrator's final award.

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NEW JERSEY *v.* DELAWARE

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 134, Orig. Argued November 27, 2007—Decided March 31, 2008

This is the third original action between New Jersey and Delaware involving the boundary along the Delaware River (or River) separating the two States. The first action was settled by a compact the two States approved in 1905, and Congress ratified in 1907 (1905 Compact or Compact). See *New Jersey* v. *Delaware*, 205 U. S. 550 *(New Jersey* v. *Delaware I)*. The 1905 Compact addressed fishing rights but did not define the interstate boundary line. Two provisions of the Compact sowed the seeds for further litigation. Article VII provided: "Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature." But Article VIII added: "Nothing herein . . . shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth." The second action, resolved by this Court in 1934, conclusively determined the location of the interstate boundary: Delaware owned "the river and the subaqueous soil" within a twelve-mile circle centered on New Castle, Del., "up to [the] low water mark on the easterly or New Jersey side"; south of the twelve-mile circle, the middle of the River's main ship channel marked the boundary. *New Jersey* v. *Delaware*, 291 U. S. 361, 385 *(New Jersey* v. *Delaware II)*.

The current controversy was sparked by the Delaware Department of Natural Resources and Environmental Control's (DNREC) refusal to grant British Petroleum permission to construct a liquefied natural gas (LNG) unloading terminal projected to extend beyond New Jersey's shore some 2,000 feet into Delaware territory. DNREC determined that, under Delaware's Costal Zone Act (DCZA), the proposed terminal would be an "offshore bulk product transfer facilit[y]" as well as a "heavy industry use," both prohibited by the DCZA. New Jersey commenced this action, seeking a declaration that Article VII of the 1905 Compact gave it exclusive regulatory authority over all projects appurtenant to its shores, including wharves extending past the low-water mark on New Jersey's side into Delaware territory. Delaware's answer asserted that, under, *inter alia*, Article VIII of the Compact and *New Jersey* v. *Delaware II*, it had regulatory authority, undiminished by Article VII, over structures located within its borders. On cross-motions for summary judgment, the Special Master filed a report recommending a determination by this Court that the "riparian jurisdiction" preserved

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to New Jersey by Article VII is not exclusive and that Delaware has overlapping jurisdiction, within the twelve-mile circle, to regulate improvements outshore of the low-water mark on the New Jersey side of the River. New Jersey filed exceptions.

Held: Article VII of the 1905 Compact did not secure to New Jersey *exclusive* jurisdiction over all riparian improvements commencing on its shores; New Jersey and Delaware have overlapping authority to regulate riparian structures and operations of extraordinary character extending outshore of New Jersey's domain into territory over which Delaware is sovereign. Pp. 609–623.

(a) The Court rejects New Jersey's argument that Article VII, which accords each State "riparian jurisdiction of every kind and nature," bars Delaware from any encroachment upon New Jersey's authority over improvements extending from New Jersey's shore. Pp. 609–615.

(1) The novel term "riparian jurisdiction," as used in Article VII, is properly read as a limiting modifier and does not mean "exclusive jurisdiction." "[R]iparian jurisdiction" has never been a legal term of art, and appears to be a verbal formulation the 1905 Compact negotiators devised specifically for Article VII. Elsewhere in the 1905 Compact—most notably, in Article VIII—the more familiar term "jurisdiction" or "exclusive jurisdiction" appears. Attributing to "riparian jurisdiction" the same meaning as "jurisdiction" unmodified, or equating the novel term with the formulation "exclusive jurisdiction," would deny operative effect to each word in the Compact. See *United States* v. *Menasche*, 348 U. S. 528, 538–539. Presumably drafted in recognition of the still-unresolved boundary dispute, Article VIII requires an express statement in the Compact in order to "affect the territorial . . . jurisdiction of either State . . . over the Delaware River." The Court resists reading the uncommon term "riparian jurisdiction," even when aggrandized by the phrase "of every kind and nature," as effectuating a transfer to New Jersey of Delaware's entire "territorial . . . jurisdiction . . . over [the portion of] the Delaware River [in question]." Pp. 610–612.

(2) A riparian landowner ordinarily enjoys the right to build a wharf to access navigable waters far enough to permit the loading and unloading of ships. But that right, New Jersey agrees, is subject to state regulation for the protection of the public. New Jersey sees itself, however, as the only State empowered to regulate, for the benefit of the public, New Jersey landowners' exercise of riparian rights. Commonly, the State that grants riparian rights also has regulatory authority over their exercise. But the 1905 Compact's negotiators faced an unusual situation: As long as the boundary issue remained unsettled, they could not know which State was sovereign within the twelve-mile circle be-

yond New Jersey's shore. They likely knew, however, that "[t]he rights of a riparian owner [seeking to wharf out into] a navigable stream . . . are governed by the law of the state in which the stream is situated." *Weems Steamboat Co. of Baltimore* v. *People's Steamboat Co.*, 214 U. S. 345, 355. With the sovereignty issue reserved by the 1905 Compact for another day, it is difficult to gainsay the Special Master's conclusion that Article VII's reference to "riparian jurisdiction" did not mean "exclusive jurisdiction." Endeavoring to harmonize Article VII with the boundary determination, the Special Master concluded that Article VII's preservation to each State of "riparian jurisdiction" gave New Jersey control of the riparian rights ordinarily and usually enjoyed by landowners on New Jersey's shore. But once the boundary line at low water is passed, the Special Master further concluded, New Jersey's regulatory authority is qualified. Just as New Jersey cannot grant land belonging to Delaware, New Jersey cannot authorize activities that go beyond the exercise of ordinary and usual riparian rights in the face of contrary regulation by Delaware. Pp. 612–615.

(b) An 1834 compact between New Jersey and New York establishing the two States' common Hudson River boundary casts informative light on the 1905 New Jersey-Delaware Compact. Similar to the boundary settled in *New Jersey* v. *Delaware II*, the 1834 accord located the New Jersey-New York boundary at "the low water-mark on the . . . New Jersey side [of the Hudson River,]" 4 Stat. 710. Unlike the 1905 Compact, however, the 1834 agreement expressly gave New Jersey "the *exclusive right* of property in and to . . . land under water" and "*the exclusive jurisdiction of and over the wharves, docks, and improvements . . . on the shore of the said state* . . . ," *ibid.* (emphasis added). Comparable language is noticeably absent in Article VII of the 1905 Compact, while other provisions of the Compact appear to have been adopted almost verbatim from the 1834 New Jersey-New York accord. New Jersey, therefore, could hardly claim ignorance that Article VII could have been but was not drafted to grant it "exclusive jurisdiction" (not merely "riparian jurisdiction") over wharves and other improvements extending from its shore into navigable waters. Pp. 615–617.

(c) *Virginia* v. *Maryland*, 540 U. S. 56, 75—in which this Court held that a Maryland-Virginia boundary settlement gave Virginia "sovereign authority, free from regulation by Maryland, to build improvements appurtenant to [Virginia's] shore and to withdraw water from the [Potomac] River"—provides scant support for New Jersey's claim. As the Special Master explained, the result in *Virginia* v. *Maryland* turned on the unique language of the 1785 compact and 1877 arbitration award there involved. The 1785 compact addressed only "the right [of the

citizens of each State] to build wharves and improvements regardless of which State ultimately was determined to be sovereign over the River," *id.*, at 69. Concerning the States themselves, the 1877 arbitration award that settled the boundary was definitive. See *id.*, at 75. By recognizing in that award Virginia's right, "*qua* sovereign," "to use the River beyond low-water mark," *id.*, at 72, the arbitrators manifested their intention to safeguard Virginia's authority to construct riparian improvements outshore of the low-water mark free from regulation by Maryland. By contrast, neither the 1905 Compact nor *New Jersey* v. *Delaware II* purported to give New Jersey all regulatory oversight (as opposed to only "riparian jurisdiction"). Pp. 617–618.

(d) Delaware's claim to regulatory authority is further supported by New Jersey's acceptance (until the present controversy) of Delaware's jurisdiction over water and land within its domain to preserve the quality and prevent deterioration of its coastal areas. When New Jersey sought federal approval for its coastal management program, it made the representation—fundamentally inconsistent with its position here—that any New Jersey project extending beyond mean low water within the twelve-mile circle would require coastal permits from both States. DNREC, with no objection from New Jersey, had previously rejected as a prohibited bulk transfer facility an earlier request to build an LNG terminal extending from New Jersey into Delaware. DNREC issued permits for each of the three structures extending from New Jersey into Delaware built between 1969 and 2006, one of them undertaken by New Jersey itself. Even during the pendency of this action, New Jersey applied to Delaware for renewal of the permit covering the portion of New Jersey's project that extended into Delaware. Pp. 618–621.

(e) Nowhere does Article VII "expressly set forth," in Article VIII's words, Delaware's lack of any governing authority over territory within the State's own borders. The Special Master correctly determined that Delaware's pre-1971 "hands off" policy regarding coastal development did not signal that the State never could or never would assert any regulatory authority over structures using its subaqueous land. In the decades since Delaware, pursuant to the DCZA, began to manage its waters and submerged lands, the State has followed a consistent course: Largely with New Jersey's cooperation, Delaware has checked proposed structures and activity extending beyond New Jersey's shore into Delaware's domain in order to protect the natural environment of its coastal areas. P. 622.

(f) Given the authority over riparian rights preserved for New Jersey by the 1905 Compact, Delaware may not impede ordinary and usual exercises of the right of riparian owners to wharf out from New Jersey's shore. The project British Petroleum sought to construct and operate,

however, goes well beyond the ordinary or usual. Delaware's classification of the proposed LNG unloading terminal as a "heavy industry use" and a "bulk product transfer facilit[y]" under the DCZA has not been, and hardly could be, challenged as inaccurate. Consistent with the scope of Delaware's retained police power to regulate certain riparian uses, it was within that State's authority to prohibit construction of the LNG facility. Pp. 622–623.

Delaware's authority to deny British Petroleum permission to construct the proposed LNG terminal confirmed; New Jersey's exceptions overruled; and the Special Master's proposed decree entered with modifications consistent with the Court's opinion.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, SOUTER, and THOMAS, JJ., joined, and in which STEVENS, J., joined as to paragraphs 1(c), 2, 3, and 4 of the Decree. STEVENS, J., filed an opinion concurring in part and dissenting in part, *post*, p. 624. SCALIA, J., filed a dissenting opinion, in which ALITO, J., joined, *post*, p. 628. BREYER, J., took no part in the consideration or decision of the case.

H. Bartow Farr III argued the cause for plaintiff. With him on the brief were *Anne Milgram*, Attorney General of New Jersey, *Rachel J. Horowitz* and *Barbara L. Conklin*, Deputy Attorneys General, *Gerard Burke*, Assistant Attorney General, and *John R. Renella*, *William E. Andersen*, *Amy C. Donlon*, *Dean Jablonski*, and *Eileen P. Kelly*, Deputy Attorneys General.

David C. Frederick argued the cause for defendant. With him on the brief were *Joseph R. Biden III*, Attorney General of Delaware, *Kevin P. Maloney*, *Scott H. Angstreich*, *Scott K. Attaway*, *Priya R. Aiyar*, *Collins J. Seitz, Jr.*, *Matthew F. Boyer*, and *Max B. Walton*.*

JUSTICE GINSBURG delivered the opinion of the Court.

The States of Delaware and New Jersey seek this Court's resolution of a dispute concerning their respective regulatory authority over a portion of the Delaware River within a circle of twelve miles centered on the town of New Castle,

Stuart A. Raphael and *Sona Rewari* filed a brief for BP America Inc. et al. as *amici curiae*.

Delaware. In an earlier contest between the two States, this Court upheld the title of Delaware to "the river and the subaqueous soil" within the circle "up to [the] low water mark on the easterly or New Jersey side." *New Jersey* v. *Delaware*, 291 U. S. 361, 385 (1934) *(New Jersey* v. *Delaware II)*.[1] Prior to that 1934 boundary determination, in 1905, the two States had entered into an accord (1905 Compact or Compact), which Congress ratified in 1907. The Compact accommodated both States' concerns on matters over which the States had crossed swords: service of civil and criminal process on vessels and rights of fishery within the twelve-mile zone. Although the parties were unable to reach agreement on the interstate boundary at that time, the 1905 Compact contained two jurisdictional provisions important to the current dispute:

> "Art. VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States.
>
> "Art. VIII. Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth." Act of Jan. 24, 1907, 34 Stat. 860.

The controversy we here resolve was sparked by Delaware's refusal to grant permission for construction of a liquefied natural gas (LNG) unloading terminal that would extend some 2,000 feet from New Jersey's shore into territory *New Jersey* v. *Delaware II* adjudged to belong to Delaware. The LNG plant, storage tanks, and other structures would be

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[1] A map showing the interstate boundary line is annexed to the Court's Decree. *New Jersey* v. *Delaware II*, 295 U. S. 694, 700 (1935). Six of New Jersey's municipalities have one boundary all or partially at the low-water mark of the Delaware River within the twelve-mile circle.

maintained onshore in New Jersey. Relying on Article VII of the 1905 Compact, New Jersey urged that it had exclusive jurisdiction over all projects appurtenant to its shores, including wharves extending past the low-water mark on New Jersey's side into Delaware territory. Delaware asserted regulatory authority, undiminished by Article VII, over structures located within its borders; in support, Delaware invoked, *inter alia*, Article VIII of the 1905 Compact and our decision in *New Jersey* v. *Delaware II*. The Special Master we appointed to superintend the proceedings filed a report recommending a determination that Delaware has authority to regulate the proposed construction, concurrently with New Jersey, to the extent that the project reached beyond New Jersey's border and extended into Delaware's domain.

We accept the Special Master's recommendation in principal part. Article VII of the 1905 Compact, we hold, did not secure to New Jersey *exclusive* jurisdiction over all riparian improvements commencing on its shores.[2] The parties' own conduct, since the time Delaware has endeavored to regulate coastal development, supports the conclusion to which other relevant factors point: New Jersey and Delaware have overlapping authority to regulate riparian structures and operations of extraordinary character extending outshore of New Jersey's domain into territory over which Delaware is sovereign.

I

Disputes between New Jersey and Delaware concerning the boundary along the Delaware River (or River) separating the two States have persisted "almost from the beginning of statehood." *New Jersey* v. *Delaware II*, 291 U. S., at 376. The history of the States' competing claims of sovereignty,

[2] All Members of the Court agree that New Jersey lacks exclusive jurisdiction over riparian structures. *Post*, at 633 (SCALIA, J., dissenting); *post*, at 626 (STEVENS, J., concurring in part and dissenting in part).

rehearsed at length in *New Jersey* v. *Delaware II*, need not be detailed here. In brief, tracing title through a series of deeds originating with a 1682 grant from the Duke of York to William Penn, Delaware asserted dominion, within the twelve-mile circle, over the River and its subaqueous lands up to the low-water mark on the New Jersey side. *Id.*, at 364, 374.[3] New Jersey claimed sovereign ownership up to the middle of the navigable channel. *Id.*, at 363–364.

The instant proceeding is the third original action New Jersey has commenced against Delaware involving the Delaware River boundary between the two States. The first action, *New Jersey* v. *Delaware*, No. 1, Orig. (filed 1877) *(New Jersey* v. *Delaware I)*, was propelled by the States' disagreements over fishing rights. See Report of Special Master 3 (Report).[4] That case "slumbered for many years." *New Jersey* v. *Delaware II*, 291 U. S., at 377. Eventually, the parties negotiated a Compact, which both States approved in 1905, and Congress ratified in 1907. See Act of Jan. 24, 1907, ch. 394, 34 Stat. 858. Modest in comparison to the parties' initial aim, the Compact left location of the interstate boundary an unsettled question.[5] New Jersey then withdrew its

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[3] The "low-water mark" of a river is "the point to which the water recedes at its lowest stage." Black's Law Dictionary 1623 (8th ed. 2004).

[4] The Report of the Special Master, and all public filings in this case, are available at http://www.pierceatwood.com/custompagedisplay.asp?Show=2.

[5] After the States approved the Compact, but prior to Congress' ratification, the parties submitted a joint application for suspension of Court proceedings pending action by the National Legislature. *New Jersey* v. *Delaware I*, O. T. 1905, No. 1, Orig., Statement of reasons submitted orally for the joint application of Counsel on both sides for suspension of proceedings until the further order of the Court (reproduced in 1 App. of Delaware on Cross-Motions for Summary Judgment 190 (hereinafter Del. App.)). In that submission, Delaware's counsel represented that "[t]he compact . . . was . . . not a settlement of the disputed boundary, but a truce or *modus vivendi*." *Ibid.* Counsel further stated that the "main purpose" of the Compact was to authorize joint regulation of "the business of fishing in the Delaware River and Bay." *Ibid.*

complaint and this Court dismissed the case without prejudice. *New Jersey* v. *Delaware I*, 205 U. S. 550 (1907).

The second original action, *New Jersey* v. *Delaware II*, was fueled by a dispute over ownership of an oyster bed in the River below the twelve-mile circle. See Report 14. In response to New Jersey's complaint, the Court conclusively settled the boundary between the States. Confirming the Special Master's report, the Court held that, within the twelve-mile circle, Delaware owns the River and the subaqueous soil up to the low-water mark on the New Jersey side. 291 U. S., at 385.[6] But New Jersey gained the disputed oyster bed: South of the circle, the Court adjudged the boundary "to be the middle of the main ship channel in Delaware River and Bay." *Ibid.* See also *New Jersey* v. *Delaware II*, 295 U. S. 694, 699 (1935) (Decree) (perpetually enjoining the States from further disputing the boundary).

In upholding Delaware's title to the area within the twelve-mile circle, the Court rejected an argument pressed by New Jersey based on the 1905 Compact: By agreeing to the Compact, New Jersey urged, Delaware had abandoned any claim of ownership beyond the middle of the River. The Court found New Jersey's argument "wholly without force." 291 U. S., at 377. "The compact of 1905," the Court declared, "provides for the enjoyment of riparian rights, for concurrent jurisdiction in respect of civil and criminal process, and for concurrent rights of fishery. Beyond that it does not go." *Id.*, at 377–378. The Court next recited in full the text of Article VIII of the Compact: "Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein

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[6] The dissent suggests, *post*, at 630, that the long dormant first original action "appeared to be going badly" for Delaware. The strength of Delaware's claim to sovereign ownership of the riverbed within the twelve-mile circle, however, is comprehensively described in *New Jersey* v. *Delaware II*, 291 U. S., at 364–378.

expressly set forth." *Id.*, at 378 (internal quotation marks omitted).

II

The current controversy arose out of the planned construction of facilities to import, store, and vaporize foreign-source LNG; the proposed project would be operated by Crown Landing, LLC, a wholly owned subsidiary of British Petroleum (BP). See Report 19; 6 App. of Delaware on Cross-Motions for Summary Judgment 3793, 3804–3807 (hereinafter Del. App.) (Request for Coastal Zone Status Decision). The "Crown Landing" project would include a gasification plant, storage tanks, and other structures onshore in New Jersey, and a pier and related structures extending some 2,000 feet from New Jersey's shore into Delaware. Report 19–20; 6 Del. App. 3804. Supertankers with capacities of up to 200,000 cubic meters (more than 40 percent larger than any ship then carrying natural gas) would berth at the pier. *Id.*, at 3810.[7] A multipart transfer system—including, *inter alia*, cryogenic piping, a containment trough, and utility lines—would be installed on the 6,000-square-foot unloading platform and along the pier to transport the LNG (at sufficiently cold temperatures to keep it in a liquid state) from ships to three 158,000-cubic-meter storage tanks onshore; vapor byproducts resulting from the onshore gasification would be returned to the tankers. Report 19–20; 6 Del. App. 3804; 7 *id.*, at 4307 (Cherry Affidavit). Even "[d]uring the holding mode of terminal operation (when no ship is unloading)," LNG would circulate through the piping along the pier to "keep the line cold." 6 *id.*, at 3804. Construction of

[7] Two or three LNG supertankers, it was anticipated, would arrive at the unloading terminal each week. 7 Del. App. 4303, 4307 (Affidavit of Philip Cherry, Delaware Dept. of Natural Resources and Environmental Control, Director of Policy and Planning) (hereinafter Cherry Affidavit). In transit, the ships would pass densely populated areas, *id.*, at 4307–4308; a moving safety zone would restrict other vessels 3,000 feet ahead and behind, and 1,500 feet on all sides of a supertanker, *id.*, at 4308.

the Crown Landing project would require dredging 1.24 million cubic yards of subaqueous soil, affecting approximately 29 acres of the riverbed within Delaware's territory. Report 19–20.[8]

In September 2004, BP sought permission from Delaware's Department of Natural Resources and Environmental Control (DNREC) to construct the Crown Landing unloading terminal. See *id.*, at 20.[9] DNREC refused permission some months later on the ground that the terminal was barred by Delaware's Coastal Zone Act (DCZA), Del. Code Ann., Tit. 7, § 7001 *et seq.* (2001),[10] as a prohibited "offshore . . . bulk product transfer facilit[y]" as well as a prohibited "[h]eavy industry us[e]," § 7003; Report 20.[11]

Reactions to DNREC's decision boiled over on both sides. New Jersey threatened to withdraw state pension funds from Delaware banks, and Delaware considered authorizing the National Guard to protect its border from encroachment.

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[8] The dissent points to other projects involving extensive dredging. *Post*, at 642. The examples presented, however, involved large-scale public works, not privately owned and operated facilities.

[9] Three months after seeking Delaware's permission, BP commenced the permitting process in New Jersey, by filing a Waterfront Development Application with New Jersey's Department of Environmental Protection. Report 20.

[10] The DCZA is designed "to control the location, extent and type of industrial development in Delaware's coastal areas . . . and [to] safeguard th[e] use [of those areas] primarily for recreation and tourism." Del. Code Ann., Tit. 7, § 7001 (2001).

[11] On BP's appeal, Delaware's Coastal Zone Industrial Control Board affirmed DNREC's determination that the Crown Landing project was a bulk product transfer facility prohibited by the DCZA. BP did not appeal the decision, rendering it a final determination. Report 20–21. The dissent suspects that Delaware's permit denial may have been designed to lure BP away from New Jersey, siting the plant, instead, on Delaware's "own shore." *Post*, at 645. Delaware law, however, proscribes "[h]eavy industry us[e]," Del. Code Ann., Tit. 7, § 7003, in any area within "[t]he coastal zone" over which Delaware is sovereign, § 7002(a). Nothing whatever in the record before us warrants the suggestion that Delaware acted duplicitously.

See Report 21. One New Jersey legislator looked into recommissioning the museum-piece battleship U. S. S. *New Jersey*, in the event that the vessel might be needed to repel an armed invasion by Delaware. See *ibid.*

New Jersey commenced the instant action in 2005, seeking a declaration that Article VII of the 1905 Compact establishes its exclusive jurisdiction "to regulate the construction of improvements appurtenant to the New Jersey shore of the Delaware River within the Twelve-Mile Circle, free of regulation by Delaware." Motion to Reopen and for Supplemental Decree 35; see Report 22, 29. We granted leave to file a bill of complaint. 546 U. S. 1028 (2005). Delaware opposed New Jersey's reading of Article VII, and maintained that the 1905 Compact did not give New Jersey exclusive authority to "approve projects that encroach on Delaware submerged lands without any say by Delaware." Brief for Delaware in Opposition to New Jersey's Motion to Reopen and for Supplemental Decree 21; see Report 23, 29.

The Special Master appointed by the Court, Ralph I. Lancaster, Jr., 546 U. S. 1147 (2006), superintended discovery and carefully considered nearly 6,500 pages of materials presented by the parties in support of cross-motions for summary judgment. Report 27. He ultimately determined that the "riparian jurisdiction" preserved to New Jersey by Article VII of the 1905 Compact "is not exclusive" and that Delaware "has overlapping jurisdiction to regulate . . . improvements outshore of the low water mark on the New Jersey side of the River." *Id.*, at 32. New Jersey filed exceptions to which we now turn.[12]

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[12] New Jersey takes no exception to the Special Master's determinations that Delaware was not judicially estopped from challenging New Jersey's interpretation of Article VII, Report 86–92, and that Delaware has not lost jurisdiction through prescription and acquiescence, *id.*, at 92–99. See Exceptions by New Jersey to Report of Special Master and Supporting Brief 16, n. 5 (hereinafter New Jersey Exceptions).

III

At the outset, we summarize our decision and the principal reasons for it. In accord with the Special Master, we hold that Article VII of the 1905 Compact does not grant New Jersey exclusive jurisdiction over all riparian improvements extending outshore of the low-water mark. First, the novel term "riparian jurisdiction," which the parties employed in the Compact, is properly read as a limiting modifier and not as synonymous with "exclusive jurisdiction." Second, an 1834 compact between New Jersey and New York casts informative light on the later New Jersey-Delaware accord. Third, our decision in *Virginia* v. *Maryland*, 540 U. S. 56 (2003), provides scant support for New Jersey's claim. We there held that a Maryland-Virginia *boundary settlement* gave Virginia "sovereign authority, free from regulation by Maryland, to build improvements appurtenant to [Virginia's] shore and to withdraw water from the [Potomac] River." *Id.*, at 75. Delaware's 1905 agreement to New Jersey's exercise of "riparian jurisdiction," *made when the boundary was still disputed*, cannot plausibly be read as an equivalent recognition of New Jersey's sovereign authority. Finally, Delaware's claim to regulating authority is supported by New Jersey's acceptance (until the present controversy) of Delaware's jurisdiction over water and land within its domain to preserve the quality and prevent deterioration of the State's coastal areas.

A

New Jersey hinges its case on Article VII of the 1905 Compact, which it reads as conferring on "each State complete regulatory authority over the construction and operation of riparian improvements on its shores, even if the improvements extend past the low-water mark." Exceptions by New Jersey to Report of Special Master and Supporting Brief 16 (hereinafter New Jersey Exceptions). *New Jersey*

v. *Delaware II*, New Jersey recognizes, confirmed Delaware's sovereign ownership of the River and subaqueous soil within the twelve-mile circle. But, New Jersey emphasizes, the Court expressly made that determination "subject to the Compact of 1905." 291 U. S., at 385. New Jersey acknowledges that Delaware "unquestionably can exercise its police power outshore of the low-water mark." New Jersey Exceptions 16. New Jersey contends, however, that Delaware cannot do so in a manner that would interfere with the authority over riparian rights that Article VII of the 1905 Compact preserves for New Jersey. *Ibid.*

Because the meaning of the 1905 Compact and, in particular, Article VII, is key to the resolution of this controversy, we focus our attention on that issue. Significantly, Article VII provides that "[e]ach State may, on its own side of the river, continue to exercise" not "exclusive jurisdiction" or "jurisdiction" unmodified, but "riparian jurisdiction of every kind and nature." 34 Stat. 860. New Jersey argues that "riparian jurisdiction" should be read broadly to encompass full police-power jurisdiction over activities carried out on riparian structures. New Jersey Exceptions 36–37. If New Jersey enjoys full police power over improvements extending from its shore, New Jersey reasons, then necessarily Delaware cannot encroach on that authority. See Report 54.

1

We agree with the Special Master that "'riparian' is a limiting modifier." Report 57. Interpreting an interstate compact, "[j]ust as if [we] were addressing a federal statute," *New Jersey* v. *New York*, 523 U. S. 767, 811 (1998), it would be appropriate to construe a compact term in accord with its common-law meaning, see *Morissette* v. *United States*, 342 U. S. 246, 263 (1952). The term "riparian jurisdiction," however, was not a legal term of art in 1905, nor is it one now. See 7 Del. App. 4279, 4281 (Expert Report of Professor Jo-

seph L. Sax (Nov. 7, 2006)). As the Special Master stated, "riparian jurisdiction" appears to be a verbal formulation "devised by the [1905 Compact] drafters specifically for Article VII." Report 54.[13]

Elsewhere in the Compact, one finds the more familiar terms "jurisdiction" (in the introductory paragraphs and, most notably, in Article VIII) or "exclusive jurisdiction" (in Article IV).[14] To attribute to "riparian jurisdiction" the same meaning as "jurisdiction" unmodified, or to equate the novel term with the distinct formulation "exclusive jurisdiction," would deny operative effect to each word in the Compact, contrary to basic principles of construction. See *United States* v. *Menasche*, 348 U. S. 528, 538–539 (1955).

In this regard, Article VIII bears reiteration:

> "Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth." 34 Stat. 860.

Presumably drafted in recognition of the still-unresolved boundary dispute, see *supra*, at 603–606, Article VIII requires an express statement in the Compact in order to "affect the territorial . . . jurisdiction of either State . . . over the Delaware River." We resist reading the uncommon term "riparian jurisdiction," even when aggrandized by the

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[13] The term appears in no other interstate compact. New Jersey's codification of the 1905 Compact, N. J. Stat. Ann. §52:28–41 (West 2001), includes the term, but our attention has been called to no other state statute that does so.

[14] The last paragraph of Article IV reads: "Each State shall have and exercise *exclusive jurisdiction* within said river to arrest, try, and punish its own inhabitants for violation of the concurrent legislation related to fishery herein provided for." 34 Stat. 860 (emphasis added). See also *id.*, at 859 (Articles I and II, recognizing the "exclusive jurisdiction" of each State in regard to service of criminal process).

phrase "of every kind and nature," as tantamount to an express cession by Delaware of its entire "territorial . . . jurisdiction . . . over the Delaware River."

2

Endeavoring to fathom the import of the novel term "riparian jurisdiction," the Special Master recognized that a riparian landowner ordinarily enjoys the right to build a wharf to access navigable waters far enough to permit the loading and unloading of ships. Report 47–49, 58–59. Accord 1 H. Farnham, Law of Waters and Water Rights § 62, p. 279 (1904) ("The riparian owner is also entitled to have his contact with the water remain intact. This is what is known as the right of access, and includes the right to erect wharves to reach the navigable portion of the stream."); *id.*, § 111, p. 520 ("A wharf is a structure on the margin of navigable water, alongside of which vessels are brought for the sake of being conveniently loaded or unloaded."). But the Special Master also recognized that the right of a riparian owner to wharf out is subject to state regulation. Report 58; see 1 Farnham, *supra*, § 63, p. 284 (rights of riparian owner "are always subordinate to the public rights, and the state may regulate their exercise in the interest of the public"); *Shively* v. *Bowlby*, 152 U. S. 1, 40 (1894) ("[A] riparian proprietor . . . has the right of access to the navigable part of the stream in front of his land, and to construct a wharf or pier projecting into the stream . . . , subject to such general rules and regulations as the legislature may prescribe for the protection of the public . . . ." (internal quotation marks omitted)).

New Jersey took no issue with the Special Master's recognition that States, in the public interest, may place restrictions on a riparian proprietor's activities. In its response to Delaware's request for admissions, New Jersey readily acknowledged that a person wishing to conduct a particular activity on a wharf, in addition to obtaining a riparian grant, would have to comply with all other "applicable New Jersey

laws, and local laws." 6 Del. App. 4147, 4156 (New Jersey's Responses to Delaware's First Request for Admissions ¶ 22 (Sept. 8, 2006)). See also Restatement (Second) of Torts § 856, Comment *e*, pp. 246–247 (1977) ("[A] state may exercise its police power by controlling the initiation and conduct of riparian and nonriparian uses of water."). But New Jersey sees itself, to the exclusion of Delaware, as the State empowered to regulate, for the benefit of the public, New Jersey landowners' exercise of riparian rights.

In the ordinary case, the State that grants riparian rights is also the State that has regulatory authority over the exercise of those rights. But cf. *Cummings* v. *Chicago*, 188 U. S. 410, 431 (1903) (federal regulation of wharfing out in the Calumet River did not divest local government of regulatory authority based on location of project within that government's territory). In this regard, the negotiators of the 1905 Compact faced an unusual situation: As long as the boundary issue remained unsettled, they could not know which State was sovereign within the twelve-mile circle beyond New Jersey's shore. They likely knew, however, that "[i]n a case of wharfing out . . . '[t]he rights of a riparian owner upon a navigable stream in this country are governed by the law of the State in which the stream is situated.'" 1 S. Wiel, Water Rights in the Western States § 898, p. 934 (3d ed. 1911) (quoting *Weems Steamboat Co. of Baltimore* v. *People's Steamboat Co.*, 214 U. S. 345, 355 (1909)). With the issue of sovereignty reserved by the 1905 Compact drafters for another day, the Special Master's conclusion that Article VII's reference to "riparian jurisdiction" did not mean "exclusive jurisdiction" is difficult to gainsay.

The Special Master pertinently observed that, as New Jersey read the 1905 Compact, Delaware had given up all governing authority over the disputed area while receiving nothing in return. He found New Jersey's position "implausible." Report 63. "Delaware," the Special Master stated, "would not have willingly ceded all jurisdiction over matters

taking place on land that [Delaware adamantly] contended it owned exclusively and outright." *Id.*, at 64.[15]

New Jersey asserts that Delaware did just that, as shown by representations made during proceedings in *New Jersey* v. *Delaware II*. New Jersey Exceptions 44. Delaware's reply brief before the Special Master in that case stated: "Article VII of the Compact is obviously merely a recognition of the rights of the riparian owners of New Jersey and a cession to the State of New Jersey by the State of Delaware of jurisdiction to regulate those rights." 1 App. of New Jersey on Motion for Summary Judgment 123a. Further, at oral argument before the Special Master in that earlier fray, Delaware's counsel said that, in his view, the 1905 Compact "ceded to the State of New Jersey all the right to control the erection of [wharves extending into the Delaware River from New Jersey's shore] and to say who shall erect them." *Id.*, at 126a–1.

The Special Master in the instant case found New Jersey's position dubious, as do we. The representations Delaware made in the course of *New Jersey* v. *Delaware II*, the Special Master here observed, were "fully consistent with [the Master's] interpretation of Article VII [of the 1905 Compact]." Report 89. New Jersey did indeed preserve "the right to

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[15] The dissent insists that Delaware received "plenty in return." *Post*, at 630. But, in truth, the 1905 Compact gave neither State "plenty." Each State accommodated to the other to assure equal access to fishing rights in the River. See *supra*, at 604, n. 5. Delaware agreed to the Compact "not [as] a settlement of the disputed boundary, but [as] a truce or *modus vivendi*." 1 Del. App. 190. In deciding whether to proceed with the litigation, Delaware's Attorney General advised that the suit "would entail very considerable expense." 2 *id.*, at 1069, 1075 (Letter from Herbert Ward to Gov. John Hunn (Jan. 31, 1903)). He noted, however, that the process of preparing Delaware's Answer had "greatly strengthened the belief and reliance of counsel . . . upon the justice of her claim." *Id.*, at 1076. The decision in *New Jersey* v. *Delaware II* confirmed Delaware's conviction. See *supra*, at 605, n. 6.

exercise its own jurisdiction over riparian improvements appurtenant to its shore." *Ibid.* But, critically, Delaware nowhere "suggested that New Jersey would have the *exclusive* authority to regulate all aspects of riparian improvements, even if on Delaware's land." *Ibid.*

Delaware, in its argument before the Special Master, was equally uncompromising. As a result of the 1934 boundary determination, Delaware urged, "the entire River is on Delaware's 'own side,' and New Jersey consequently ha[d] no 'side' of the River on which to exercise any riparian rights or riparian jurisdiction." *Id.*, at 36. Article VII of the 1905 Compact, according to Delaware, was a "temporary" measure, "entirely . . . contingent on the ultimate resolution of the boundary." *Id.*, at 39. That reading, the Special Master demonstrated, was altogether fallacious. *Id.*, at 36–40.

Seeking to harmonize Article VII with the boundary determination, the Special Master reached these conclusions. First, the 1905 Compact gave New Jersey no authority to *grant* lands owned by Delaware. *Id.*, at 45–46. Second, Article VII's preservation to each State of "riparian jurisdiction" means that New Jersey may control the riparian rights ordinarily and usually enjoyed by landowners on New Jersey's shore. For example, New Jersey may define "how far a riparian owner can wharf out, the quantities of water that a riparian owner can draw from the River, and the like." *Id.*, at 57–58. Nevertheless, New Jersey's regulatory authority is qualified once the boundary line at low water is passed. *Id.*, at 58. Just as New Jersey cannot grant land belonging to Delaware, so New Jersey cannot authorize activities that go beyond the exercise of ordinary and usual riparian rights in the face of contrary regulation by Delaware.

B

Interstate compacts, like treaties, are presumed to be "the subject of careful consideration before they are entered into,

and are drawn by persons competent to express their meaning and to choose apt words in which to embody the purposes of the high contracting parties." *Rocca* v. *Thompson*, 223 U. S. 317, 332 (1912). Accordingly, the Special Master found informative a comparison of language in the 1905 Compact with language contained in an 1834 compact between New Jersey and New York. See Report 65. That compact established the two States' common boundary along the Hudson River. Act of June 28, 1834, ch. 126, 4 Stat. 708. Similar to the boundary between New Jersey and Delaware settled in 1934 in *New Jersey* v. *Delaware II*, the 1834 accord located the New Jersey-New York boundary at "the low water-mark on the westerly or New Jersey side [of the Hudson River]." Art. Third, 4 Stat. 710; cf. *supra*, at 602. The 1834 agreement, however, expressly gave to New Jersey "the *exclusive right* of property in and to the land under water lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson river which lies between Manhattan island and New Jersey" and "*the exclusive jurisdiction of and over the wharves, docks, and improvements, made and to be made on the shore of the said state* . . . ." Art. Third, ¶¶ 1, 2, 4 Stat. 710 (emphasis added).

"Comparable language [conferring exclusive authority]," the Special Master observed, "is noticeably absent in the [1905] Compact." Report 66. The Master found this disparity "conspicuous," *id.*, at 68, for "[s]everal provisions in the two interstate compacts [contain] strikingly similar language," *id.*, at 66; see *id.*, App. J (Table Comparing Similar Provisions in the New Jersey-New York Compact of 1834 and the New Jersey-Delaware Compact of 1905). Given that provisions of the 1905 Compact appear to have been adopted almost verbatim from New Jersey's 1834 accord with New York, see *ibid.*, New Jersey could hardly claim ignorance that Article VII could have been drafted to grant New Jersey "exclusive jurisdiction" (not merely "riparian jurisdiction")

over wharves and other improvements extending from its shore into navigable Delaware River waters, *id.*, at 67.[16]

C

New Jersey urged before the Special Master, and in its exceptions to his report, that *Virginia* v. *Maryland*, 540 U. S. 56, is dispositive of this case.[17] Both cases involved an interstate compact, which left the boundary between the contending States unresolved, and a later determination settling the boundary. And both original actions were referred to Ralph I. Lancaster, Jr., as Special Master. We find persuasive the Special Master's reconciliation of his recommendations in the two actions. See Report 64–65, n. 118.

Virginia v. *Maryland* involved a 1785 compact and an 1877 arbitration award. Agreeing with the Special Master, we held that the arbitration award permitted Virginia to construct a water intake structure extending into the Potomac River, even though the award placed Virginia's boundary at the low-water mark on its own side of the Potomac. See 540 U. S., at 75. "Superficially," the Special Master said, "that holding would appear to support New Jersey's argument here, *i. e.*, that construction of wharves off New Jersey's shore should not be subject to regulation by Delaware." Report 64, n. 118. But, the Special Master explained, the result in *Virginia* v. *Maryland* turned on "the unique language of the compact and arbitration award involved in that case." Report 64, n. 118.

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[16] The 1834 accord was the subject of significant litigation in the years leading up to and surrounding the adoption of the 1905 Compact. Report 67. Notably, New York's highest court concluded Article Third of the 1834 interstate agreement meant what it said: New Jersey had "exclusive" jurisdiction over wharves extending from and beyond its shore; therefore New York lacked authority to declare those wharves to be nuisances. See *New York* v. *Central R. Co. of N. J.*, 42 N. Y. 283, 293 (1870); Report 67.

[17] The dissent, *post*, at 638–640, essentially repeats New Jersey's argument.

The key provision of the 1785 compact between Maryland and Virginia, we observed, addressed only "the right [of the citizens of each State] to build wharves and improvements regardless of which State ultimately was determined to be sovereign over the River." 540 U. S., at 69. Concerning the rights of the States, the 1877 arbitration award, not the 1785 compact, was definitive. See *id.*, at 75. The key provision of that award recognized the right of Virginia, "*qua* sovereign," "to use the River beyond low-water mark," a right "nowhere made subject to Maryland's regulatory authority." *Id.*, at 72.

Confirming the "sovereign character" of Virginia's right, we noted, Maryland had proposed to the arbitrators that the boundary line between the States be drawn around "all wharves and other improvements now extending or which may hereafter be extended, by authority of Virginia from the Virginia shore into the [Potomac] beyond low water mark." *Id.*, at 72, n. 7 (internal quotation marks omitted). Although the formulation Maryland proposed was not used in the arbitration award, the arbitrators plainly manifested their intention to accomplish the same end: to safeguard "Virginia's authority to construct riparian improvements outshore of the low water mark without regulation by Maryland." Report 65, n. 118; see *Virginia* v. *Maryland*, 540 U. S., at 73, n. 7. By contrast, in the instant case, neither the 1905 Compact, nor *New Jersey* v. *Delaware II*, the 1934 decision settling the boundary dispute, purported to give New Jersey "all regulatory oversight (as opposed to merely riparian oversight)" or to endow New Jersey with authority "exclusive of jurisdiction by Delaware." Report 65, n. 118; see *supra*, at 610–615.

D

We turn, finally, to the parties' prior course of conduct, on which the Special Master placed considerable weight. See Report 68–84; cf. *O'Connor* v. *United States*, 479 U. S. 27, 33

(1986) ("The course of conduct of parties to an international agreement, like the course of conduct of parties to any contract, is evidence of its meaning.").

Until the 1960's, wharfing out from the New Jersey shore into Delaware territory was not a matter of controversy between the two States. From 1851, when New Jersey began issuing grants for such activity, through 1969, only 11 constructions straddled the interstate boundary. Report 74. At the time of the 1905 Compact and continuing into the 1950's, Delaware, unlike New Jersey, issued no grants or leases for its subaqueous lands. Delaware regulated riparian improvements solely under its common law, which limited developments only to the extent they constituted public nuisances. *Id.*, at 69.

In 1961, Delaware enacted its first statute regulating submerged lands, and in 1966, it enacted broader legislation governing leases of state-owned subaqueous lands. *Id.*, at 70. The State grandfathered piers and wharves built prior to the effective date of the regulations implementing the 1966 statute. *Id.*, at 70–71. Permits were required, however, for modifications to the grandfathered structures and for new structures. *Id.*, at 71.[18]

Then, in 1971, Delaware enacted the DCZA to prevent "a significant danger of pollution to the coastal zone." Del. Code Ann., Tit. 7, § 7001. The DCZA prohibits within the coastal zone "[h]eavy industry uses of any kind" and "offshore gas, liquid or solid bulk product transfer facilities." § 7003. In 1972, Delaware rejected as a prohibited bulk transfer facility El Paso Eastern Company's request to build an LNG unloading facility extending from New Jersey into

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[18] In 1986, Delaware adopted its current Subaqueous Lands Act, 65 Del. Laws ch. 508, Del. Code Ann., Tit. 7, ch. 72 (2001), which authorizes DNREC to regulate any potentially polluting use made of Delaware's subaqueous lands and to grant or lease property interests in those lands. See *id.*, § 7206(a).

Delaware. 5 Del. App. 3483 (Letter from David Keifer, Director of Delaware State Planning Office, to Barry Huntsinger, El Paso Eastern Company (Feb. 23, 1972)). Shortly before denying El Paso's application, Delaware notified New Jersey's Department of Environmental Protection (NJDEP), which raised no objection to Delaware's refusal to permit the LNG terminal.[19] Delaware similarly relied on the DCZA to deny permits for construction of the Crown Landing unloading facility at issue in this case. Report 20.

Also in 1972, Congress enacted the federal Coastal Zone Management Act, 86 Stat. 1280, 16 U. S. C. § 1451 *et seq.*, which required States to submit their coastal management programs to the Secretary of Commerce for review and approval. In return, States with approved programs would receive federal funding for coastal management. See §§ 1454–1455. Delaware's coastal management program, approved by the Secretary in 1979, specifically addressed LNG facilities and reported that "'no site in Delaware [is] suitable for the location of any LNG import-export facility.'" Report 72 (quoting 4 Del. App. 2591 (Dept. of Commerce, National Oceanic and Atmospheric Admin. (NOAA), Delaware Coastal Management Program and Final Environmental Impact Statement 57 (Mar. 1980))). The next year, 1980, New Jersey gained approval for its coastal management program. The Special Master found telling, as do we, a representation New Jersey made in its submission to the Secretary:

> "The New Jersey and Delaware Coastal Management agencies . . . have concluded that any New Jersey project extending beyond mean low water *must obtain coastal permits from both states.* New Jersey and Delaware, therefore, will coordinate reviews of any proposed devel-

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[19] 5 Del. App. 3481 (Letter from David Keifer, Director of Delaware State Planning Office, to Richard Sullivan, Commissioner, NJDEP (Feb. 17, 1972)); *id.*, at 3485 (Letter from Mr. Sullivan, NJDEP, to Mr. Keifer (Mar. 2, 1972)).

> opment that would span the interstate boundary to ensure that no development is constructed unless it would be consistent with both state coastal management programs." Report 81 (quoting 4 Del. App. 2657 (NOAA, N. J. Coastal Management Program and Final Environmental Impact Statement 20 (Aug. 1980)); emphasis added).

See also Report 72–73. That representation, the Special Master observed, "is fundamentally inconsistent with the position advanced by New Jersey here, *i. e.*, that only New Jersey has the right to regulate such projects." *Id.*, at 73.

As the Special Master reported, just three structures extending from New Jersey into Delaware were built between 1969 and 2006. Delaware's DNREC issued permits for each of them. *Id.*, at 74–76. One of those projects was undertaken by New Jersey itself. The State, in 1996, sought to refurbish a stone pier at New Jersey's Fort Mott State Park. *Id.*, at 75–76. New Jersey issued a waterfront development permit for the project, but that permit approved structures only to the low-water mark. Delaware's approval was sought and obtained for structures outshore of that point. Even during the pendency of this action, New Jersey applied to Delaware for renewal of the permit covering the portion of the Fort Mott project extending into Delaware. *Ibid.*[20]

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[20] New Jersey asserts "the most striking thing about this [course of conduct] evidence is the lack of any reference by . . . New Jersey officials to the [1905] Compact itself, much less to the terms of Article VII." New Jersey Exceptions 48. "All citizens," however, "are presumptively charged with knowledge of the law." *Atkins* v. *Parker*, 472 U. S. 115, 130 (1985). The 1905 Compact is codified at N. J. Stat. Ann. §§ 52:28–34 to 52:28–45. We find unconvincing New Jersey's contention that its officials were ignorant of the State's own statutes. The assertion is all the more implausible given New Jersey's recognition of Delaware's regulatory authority in New Jersey's coastal management plan, despite a New Jersey county planning board's objection to that acknowledgment. Report 82; 4 Del. App. 3135 (NOAA, N. J. Coastal Management Program and Final Environmental Impact Statement 499 (Aug. 1980)).

IV

New Jersey v. *Delaware II* upheld Delaware's ownership of the River and subaqueous soil within the twelve-mile circle. The 1905 Compact did not ordain that this Court's 1934 settlement of the boundary would be an academic exercise with slim practical significance. Tending against a reading that would give New Jersey exclusive authority, Article VIII of the Compact, as earlier emphasized, see *supra*, at 611, states: "Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either State of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth." Nowhere does Article VII "expressly set forth" Delaware's lack of any governing authority over territory within the State's own borders. Cf. Report 43–46.

The Special Master correctly determined that Delaware's once "hands off" policy regarding coastal development did not signal that the State never could or never would assert any regulatory authority over structures using its subaqueous land. *Id.*, at 69–70. In the decades since Delaware began to manage its waters and submerged lands to prevent "a significant danger of pollution to the coastal zone," Del. Code Ann., Tit. 7, § 7001, the State has followed a consistent course: Largely with New Jersey's cooperation, Delaware has checked proposed structures and activity extending beyond New Jersey's shore into Delaware's domain in order to "protect the natural environment of [Delaware's] . . . coastal areas." *Ibid.*

* * *

Given the authority over riparian rights that the 1905 Compact preserves for New Jersey, Delaware may not impede ordinary and usual exercises of the right of riparian owners to wharf out from New Jersey's shore. The Crown Landing project, however, goes well beyond the ordinary or usual. See *supra*, at 606–607. Delaware's classification of the proposed LNG unloading terminal as a "[h]eavy industry

use" and a "bulk product transfer facilit[y]," Del. Code Ann., Tit. 7, §§ 7001, 7003, has not been, and hardly could be, challenged as inaccurate.[21] Consistent with the scope of its retained police power to regulate certain riparian uses, it was within Delaware's authority to prohibit construction of the facility within its domain.[22] As recommended by the Special Master, we confirm Delaware's authority to deny permission for the Crown Landing terminal, overrule New Jersey's exceptions, and enter, with modifications consistent with this opinion, the decree proposed by the Special Master.

It is so ordered.

JUSTICE BREYER took no part in the consideration or decision of this case.

DECREE

The Court having exercised original jurisdiction over this controversy between two sovereign States; the issues having been referred to the Special Master appointed by the Court; the Court having received briefs and heard oral argument on New Jersey's exceptions to the Report of the Special Master and Delaware's responses thereto; and the Court having issued its Opinion, *supra*, at 601–622 and this page.

It is Hereby Ordered, Adjudged, Declared, and Decreed as follows:

1. (a) The State of New Jersey may, under its laws, grant and thereafter exercise governing authority over ordinary

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[21] We agree with the dissent, *post*, at 644, that Delaware could not rationally categorize as a "heavy industry use" a terminal for unloading cargoes of tofu and bean sprouts. On the other hand, we cannot fathom why, if Delaware could block a casino, or even a restaurant on a pier extending into its territory, *post*, at 633–634, it could not reject a permit for the LNG terminal described, *supra*, at 606–607.

[22] In deploring New Jersey's loss, *post*, at 644–645, the dissent overlooks alternative sites in New Jersey that could accommodate BP's LNG project. 7 Del. App. 4306 (Cherry Affidavit).

and usual riparian rights for the construction, maintenance, and use of wharves and other riparian improvements appurtenant to the eastern shore of the Delaware River within the twelve-mile circle and extending outshore of the low-water mark; and further

(b) The State of Delaware may, under its laws and subject to New Jersey's authority over riparian rights as stated in the preceding paragraph, exercise governing authority over the construction, maintenance, and use of those same wharves and other improvements appurtenant to the eastern shore of the Delaware River within the twelve-mile circle and extending outshore of the low-water mark, to the extent that they exceed ordinary and usual riparian uses.

(c) In refusing to permit construction of the proposed Crown Landing LNG unloading terminal, Delaware acted within the scope of its governing authority to prohibit unreasonable uses of the river and soil within the twelve-mile circle.

2. Except as hereinbefore provided, the motions for summary judgment of both the States of New Jersey and Delaware are denied and their prayers for relief dismissed with prejudice.

3. The party States shall share equally in the compensation of the Special Master and his assistants, and in the costs of this litigation incurred by the Special Master.

4. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as it may from time to time deem necessary or desirable to give proper force and effect to this Decree or to effectuate the rights of the parties.

JUSTICE STEVENS, concurring in part and dissenting in part.

While I agree with most of the reasoning in the Court's opinion, I do not agree with the rule it announces, or with all of the terms of its decree. In my view, the construction

and maintenance of wharves and other riparian improvements that extend into territory over which Delaware is sovereign may only be authorized by New Jersey to the extent that such activities are not inconsistent with Delaware's exercise of its police power. I therefore join paragraphs 1(c), 2, 3, and 4 of the Court's decree, and write separately to explain that in my view, New Jersey's authority to regulate beyond the low-water mark on its shore is subordinate to the paramount authority of the sovereign owner of the river, Delaware.

I

At common law, owners of land abutting bodies of water enjoyed certain rights by virtue of their adjacency to that water. See 1 H. Farnham, Law of Waters and Water Rights § 62, p. 279 (1904) ("The riparian owner is . . . entitled to have his contact with the water remain intact. This is what is known as the right of access, and includes the right to erect wharves to reach the navigable portion of the stream"). Yet those rights were by no means unlimited; "[w]hile the rights of the riparian owner cannot be destroyed . . . they are always subordinate to the public rights, and the state may regulate their exercise in the interest of the public." *Id.*, § 63, at 284. See also 4 Restatement (Second) of Torts § 856, Comment *e* (1977) ("[A] state may exercise its police power by controlling the initiation and conduct of riparian and nonriparian uses of water").[1]

[1] See also *Weber* v. *Board of Harbor Comm'rs*, 18 Wall. 57, 64–65 (1873) ("[A] riparian proprietor, whose land is bounded by a navigable stream, has the right of access to the navigable part of the stream in front of his land, and to construct a wharf or pier projecting into the stream, for his own use, or the use of others, *subject to such general rules and regulations as the legislature may prescribe for the protection of the public*" (emphasis added)); *Yates* v. *Milwaukee*, 10 Wall. 497, 504 (1871) ("[The owner of a lot along the river] is . . . entitled to the rights of a riparian proprietor whose land is bounded by a navigable stream . . . *subject to such general rules and regulations as the legislature may see proper to impose*" (emphasis added)).

From these authorities it is clear that the rights of riparian landowners are ordinarily subject to regulation by *some* State. The only relevant question, then, for purposes of this case, is *which* State. As the Court notes, "[i]n the ordinary case, the State that grants riparian rights is also the State that has regulatory authority over the exercise of those rights," *ante*, at 613. But the history of the relationship between these two States vis-à-vis their jointly bounded river takes this case out of the ordinary. In light of the 1905 Compact, our previous decision in *New Jersey* v. *Delaware*, 291 U. S. 361 (1934), and the States' course of conduct, I agree with the Court's sensible conclusion that within the twelve-mile circle, the two States' authority over riparian improvements is to some extent overlapping. In my judgment, however, that overlapping authority does not extend merely to the regulation of "riparian structures and operations of extraordinary character" beyond the low-water mark on New Jersey's shore, *ante*, at 603, but to *all* riparian structures and operations extending out from New Jersey into Delaware's domain. I would hold, therefore, that New Jersey may only grant, and thereafter exercise governing authority over, the rights of construction, maintenance, and use of wharves and other riparian improvements beyond the low-water mark to the extent that the grant and exercise of those rights is not inconsistent with the police power of the State of Delaware.

II

In *Virginia* v. *Maryland*, 540 U. S. 56, 80 (2003), I set forth my view that the rights enjoyed by riparian landowners along the Virginia shore of the Potomac River were subject to regulation by the owner of the river, Maryland. I there explained that "th[e] landowners' riparian rights are—like all riparian rights at common law—subject to the paramount regulatory authority of the sovereign that owns the river, [Maryland]," *id.*, at 82 (dissenting opinion). I would have

held, therefore, that it was within Maryland's power to prevent the construction of the water intake facility that Fairfax County, Virginia, wished to build. *A fortiori*, then—putting to one side the distinctions the Court today draws between the two cases, *ante*, at 617–618—Delaware possesses the authority, under its laws, to restrict the construction of the proposed liquefied natural gas facility that would extend hundreds of feet into its sovereign territory.

But inherent in the notion of concurrency are limits to the authority of even the sovereign that owns the river. In *Virginia* v. *Maryland*, *supra*, I noted that the case did not require the Court to "determine the precise extent or character of Maryland's regulatory jurisdiction," because the issue presented was merely "whether Maryland may impose *any* limits on . . . Virginia landowners whose property happens to abut the Potomac." *Id.*, at 82 (dissenting opinion). Similarly, in this case we need not definitively settle the extent to which there may exist limitations on Delaware's exercise of authority over its river and improvements thereon; for even Delaware's counsel conceded at argument that Delaware could not impose a total ban on the construction of wharves extending out from New Jersey's shores. Tr. of Oral Arg. 49, 50. Similarly, Delaware should not be permitted to treat differently riparian improvements extending outshore from New Jersey's land and those commencing on Delaware's own soil, absent some reasonable police-power purpose for that differential treatment. Apart from those clear constraints, however—and subject to applicable federal law[2]—in my view it is Delaware that possesses the primary authority over riparian improvements extending into its territory.

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[2]See 4 Restatement (Second) of Torts §856, Comment *e* (1977) ("The United States may prohibit, limit and regulate the diversion, obstruction or use of navigable waters . . . if those acts affect the navigable capacity of navigable waters").

III

Despite my differing views set forth herein, I do agree with the conclusion that Delaware may prohibit construction of the facility that spawned this complaint, and therefore join the portion of the Court's decree so finding.

JUSTICE SCALIA, with whom JUSTICE ALITO joins, dissenting.

With all due respect, I find the Court's opinion difficult to accept. The New Jersey-Delaware Compact of 1905 (Compact or 1905 Compact), Art. VII, 34 Stat. 860, addressed the "exercise [of] riparian jurisdiction," and the power to "make grants . . . of riparian . . . rights." The particular riparian right at issue here is the right of wharfing out. All are agreed that jurisdiction and power over that right were given to New Jersey on its side of the Delaware River. The Court says, however, that that jurisdiction and power was not exclusive. I find that difficult to accept, because if Delaware could forbid the wharfing out that Article VII allowed New Jersey to permit, Article VII was a ridiculous nullity. That could not be what was meant. The Court seeks to avoid that obstacle to credibility by saying that Delaware's jurisdiction and power is limited to forbidding "activities that go beyond the exercise of ordinary and usual riparian rights." *Ante*, at 615. It is only "riparian structures and operations of *extraordinary character*" over which Delaware retains "overlapping authority to regulate." *Ante*, at 603 (emphasis added). But that also is difficult to accept, because the Court explains neither the meaning nor the provenance of its "extraordinary character" test. The exception (whatever it means) has absolutely no basis in prior law, which regards as beyond the "ordinary and usual" (and hence beyond the legitimate) only that wharfing out which interferes with navigation. So unheard of is the exception that its first appearance in this case is in the Court's opinion.

I would sustain New Jersey's objections to the Special Master's Report.

I

I must begin by clearing some underbrush. One of Delaware's principal arguments—an argument accepted by the Master and implicitly accepted by the Court—is that the 1905 Compact must not be construed to limit Delaware's pre-Compact (albeit at the time unrecognized) sovereign control over the Delaware River, because of the "strong presumption against defeat of a State's title" in interpreting agreements. See Report of Special Master 42–43 (Report) (quoting *United States* v. *Alaska*, 521 U. S. 1, 34 (1997); internal quotation marks omitted). According to Delaware, this presumption establishes that the 1905 Compact gave New Jersey the authority to *allocate* riparian rights, but left with Delaware the power to *veto* exercises of those rights under its general police-power authority.

I have written of this presumption elsewhere that it "has little if any independent legal force beyond what would be dictated by normal principles of contract interpretation. It is simply a rule of presumed (or implied-in-fact) intent." *United States* v. *Winstar Corp.*, 518 U. S. 839, 920 (1996) (opinion concurring in judgment). It is a manifestation of the commonsense intuition that a State will rarely contract away its sovereign power. That intuition is sound enough in almost all state dealings with private citizens, and in some state dealings with other States. It has no application here, however, because the whole purpose of the 1905 Compact was precisely to come to a compromise agreement on the exercise of the two States' sovereign powers. Entered into at a time when Delaware and New Jersey disputed the location of their boundary, the Compact demarcated the authority between the two States with respect to service of civil and criminal process on vessels, rights of fishery, and riparian rights on either side of the Delaware River within the circle of a 12-mile radius centered on the town of New Castle, Delaware. See Compact, 34 Stat. 858; *New Jersey* v. *Delaware*, 291 U. S. 361, 377–378 (1934) *(New Jersey* v. *Delaware II)*. There is no way the Compact can be interpreted *other*

than as a yielding by both States of what they claimed to be their sovereign powers. The only issue is *what* sovereign powers were yielded, and that is best determined from the language of the Compact, with no thumb on the scales.

Besides relying on the presumption, the Special Master believed (and the Court believes) that New Jersey's claims must be viewed askance because it is implausible that Delaware would have "given up all governing authority over the disputed area while receiving nothing in return." *Ante*, at 613. But Delaware received plenty in return. First of all, it ensured access of its citizens to fisheries on the side of the river claimed by New Jersey—something it evidently cared more about than the power to control wharfing out from the Jersey shore, which it had never theretofore exercised. And it obtained (as the Compact observed) "the amicable termination" of New Jersey's then-pending original action in the Supreme Court, which had "been pending for twenty-seven years and upwards." 34 Stat. 858–859. How plausible it was that Delaware would give up anything to get rid of that suit surely depends upon how confident Delaware was that it would prevail. And to tell the truth, the case appeared to be going badly. As the Compact observed, the Supreme Court had issued a preliminary injunction against Delaware "restraining the execution of certain statutes of the State of Delaware relating to fisheries." *Id.*, at 859. The order issuing that injunction had remarked that Delaware had now "interfered with and claimed to control the right of fishing" which New Jerseyans had "heretofore been accustomed" to exercise without Delaware's interference for over 70 years. Order in *New Jersey* v. *Delaware*, No. 1, Orig. (filed 1877), Lodging for Brief of State of Delaware in Opposition to State of New Jersey's Motion to Reopen (Tab 1, pp. 52–54). By providing for dismissal of New Jersey's suit, the Compact assured Delaware that the Supreme Court's rather ominous sounding preliminary order would not become the Court's

holding, perhaps the consequence of a rationale that gave New Jersey jurisdiction in the river.

II

Article VII of the 1905 Compact between New Jersey and Delaware reads as follows:

> "Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States." 34 Stat. 860.

As the Court recognizes, this provision allocates to each State jurisdiction over a bundle of rights that, at the time of the Compact, riparian landowners, or "owners of land abutting on bodies of water," possessed under the common law "by reason of their adjacency." 1 H. Farnham, Law of Waters and Water Rights §62, p. 278 (1904) (Farnham). Those riparian rights included the right to "fill in and to build wharves and other structures in the shallow water in front of [the upland] and below low-water mark." *Id.*, §113b, at 534. A wharf, the type of structure at issue here, "imports a place built or constructed for the purpose of loading or unloading goods." *Id.*, §111, at 520, n. 1. It was considered "a necessary incident of the right to construct [wharves and piers] that they shall project to a distance from the shore necessary to reach water which shall float vessels, the largest as well as the smallest, that are engaged in commerce upon the water into which they project." *Id.*, at 522. Thus, wharves could be built up to "the point of navigability," J. Gould, Treatise on the Law of Waters, including Riparian Rights §181, p. 352 (2d ed. 1891) (Gould), so long as they did not "interfere needlessly with the right of navigation" possessed by members of the general public upon navigable waters, 1 Farnham §111, at 521.

The two States would have been acquainted with this common law. New Jersey case law comported with the horn-

book rules. According to the State's Court of Errors and Appeals, it was "undoubted" and the "common understanding" that "the owners of land bounding on navigable waters had an absolute right to wharf out and otherwise reclaim the land down to and even below low water, provided that they did not thereby impede the paramount right of navigation." *Bell* v. *Gough*, 23 N. J. L. 624, 658 (1852) (opinion of Elmer, J.); see also J. Angell, Treatise on the Right of Property in Tide Waters and in the Soil and Shores Thereof 234 (1847) ("[T]he right of a riparian proprietor to 'wharf out' into a public river, is a local custom in New Jersey"); Gould § 171, at 342 ("[T]he common understanding in [New Jersey] carries the right [to wharf out] even below low-water mark, provided there is no obstruction to the navigation"). Case authority in Delaware seems to be lacking, but in *New Jersey* v. *Delaware II* the State assured the Special Master at oral argument that "it is undoubtedly true in the State of Delaware . . . that the upland owner had the right to wharf out . . . subject only that you must not . . . obstruct navigation." 1 App. of New Jersey on Motion for Summary Judgment 126a–1 (hereinafter NJ App.).

Thus, under the plain terms of the 1905 Compact, each State had "jurisdiction"—the "authority of a sovereign power to govern or legislate," Webster's International Dictionary of the English Language 806 (1898)—over wharfing out on "its own side of the river." To emphasize that this jurisdiction was plenary—that it included, for example, not merely the power to prohibit wharfing out but also the power to permit it—Article VII specified that the jurisdiction it conferred would be "of every kind and nature."

And finally, the jurisdictional grant was not framed as though it was conferring on either State some hitherto unexercised power. Rather, the Compact provided that each State would "*continue to*" exercise the allocated "riparian jurisdiction," clearly envisioning that each State would wield in the future the same authority over riparian rights it had

wielded in the past. 34 Stat. 860 (emphasis added). This is significant because, before adoption of the Compact in 1905, New Jersey alone had regulated the construction of riparian improvements on New Jersey's side of the Delaware River. It had repeatedly authorized the construction of piers and wharves that extended beyond the low-water line. App. to Report C–4 to C–5 (listing New Jersey Acts authorizing riparian landowners to construct wharves); 7 NJ App. 1196a–1199a. Delaware, by contrast, had never regulated riparian rights on the New Jersey side, and indeed, at the time of the Compact even on its own side there was "little evidence of [the State's] active involvement in shoreland development . . . ." Report 69.

I would think all of this quite conclusive of the fact that New Jersey was given full and exclusive control over riparian rights on the New Jersey side. The Court concludes that this was not so, however, in part because of the alleged implausibility of Delaware's "giv[ing] up all governing authority . . . while receiving nothing in return," *ante*, at 613 (a mistaken contention that I have already addressed), and in part because "riparian jurisdiction" is different from "exclusive jurisdiction," the term used in an 1834 Compact between New Jersey and New York, which referred to "the exclusive jurisdiction of and over the wharves, docks, and improvements, made and to be made on the shore . . . ." Act of June 28, 1834, ch. 126, Art. Third, 4 Stat. 710.

I willingly concede that exclusive riparian jurisdiction is not the same as "exclusive jurisdiction" *simpliciter*. It includes only exclusive jurisdiction over *riparian rights* which, as I have described, include the right to erect wharves *for the loading and unloading of goods*. That jurisdiction does not necessarily include, for example, the power to permit or forbid the construction of a casino on the wharf, or even the power to serve legal process on the wharf. Jurisdiction to control such matters—which were not established as part of riparian rights by the common-law and

hornbook sources that the parties relied on in framing the Compact—may well fall outside the scope of the "riparian jurisdiction" that the Compact grants. See, *e. g.*, *Tewksbury* v. *Deerfield Beach*, 763 So. 2d 1071 (Fla. App. 1999) (operation of a restaurant on a dock is not included within riparian rights). Such powers—which may well have been conveyed by a grant of "exclusive jurisdiction" such as that contained in the New York-New Jersey Compact—are not at issue in this case. What is at issue is jurisdiction over the core riparian right of building a wharf to be used for the loading and unloading of cargo. And that *that* jurisdiction was given exclusively to New Jersey is made perfectly clear by the Compact's recognition of each State's riparian jurisdiction only "*on its own side of the river.*" 34 Stat. 860 (emphasis added). It does not take vast experience in textual interpretation to conclude that this implicitly excludes each State's riparian jurisdiction *on the other State's side of the river. (Inclusio unius est exclusio alterius.)* There was no need, therefore, to specify *exclusive* riparian jurisdiction.

The Court's position gains no support from the fact that the rights of a private riparian owner "'are always subordinate to the public rights, and the state may regulate their exercise in the interest of the public.'" *Ante*, at 612 (quoting 1 Farnham § 63, at 284). The Compact did not purport to convey mere private rights, but rather "riparian *jurisdiction* of every kind and nature." If that means anything at all, it means that *New Jersey* is the State that "may regulate [the] exercise [of the rights of a private riparian owner] in the interest of the public." Delaware's contention that it retains the authority to prohibit under its police power even those activities that are specifically allowed to New Jersey under the Compact renders not just Article VII but most of the Compact a virtual nullity. Article III, for example, gives the States "common right of fishery throughout, in, and over the waters" of the Delaware. 34 Stat. 859. But under its police powers a sovereign State could regulate fishing

within its public navigable waters. See Gould § 189, at 362. Thus, under Delaware's view, just as its ownership of the riverbed would allow it to trump New Jersey's authority to permit wharfing out, so also its ownership of the riverbed would allow it to prevent fishing. That would be an extraordinary result, since the litigation the 1905 Compact was designed to resolve arose over fishing rights, after Delaware enacted a law in 1871 requiring New Jersey fishermen to obtain a Delaware license. See Report 3–6.

III

The Court, following the Special Master's analysis, see *id.*, at 68–84, asserts that today's judgment is supported by the parties' course of conduct after conclusion of the Compact. I frankly think post-Compact conduct irrelevant to this case, since it can properly be used only to clarify an ambiguous agreement, and there is no ambiguity here. The Court, moreover, overstates the post-Compact conduct favoring Delaware's position and understates the post-Compact conduct favoring New Jersey. But even if post-Compact conduct is consulted, no such conduct—none whatever—supports the Court's "extraordinary character" test, whereas several instances of such conduct strongly support the resolution I have suggested in this dissent.

The Court relies upon four instances of Delaware's exercise of jurisdiction over wharfing out from the Jersey shore, and two instances of New Jersey's acquiescence in such an exercise—all postdating 1969. As to the former, the three structures extending from New Jersey into Delaware built between 1969 and 2006 were permitted by Delaware, *ante*, at 621; and another application for a permit was denied, *ante*, at 619–620. The Court never establishes, however, that these instances of Delaware's assertion of jurisdiction related to wharves of "extraordinary character," which is the only jurisdiction that the Court's decree confers upon Delaware. At best, these assertions of jurisdiction support not the

Court's opinion, but rather Delaware's assertion that it may regulate all wharves on the river—an assertion that the Court rejects. The same mismatch is present with both instances of New Jersey's asserted acquiescence. One of them was New Jersey's application for Delaware's permission to refurbish the stone pier at Fort Mott State Park, described *ante*, at 621. That construction could not conceivably be characterized as of "extraordinary character," and thus New Jersey did not need to ask Delaware for permission under the Court's theory. In the other instance, described *ante*, at 620, New Jersey's Coastal Management Agency assured the Secretary of Commerce that "'*any* New Jersey project extending beyond mean low water'" (emphasis added) had to be approved by Delaware's Coastal Management Agency as well as New Jersey's. This again supports Delaware's theory of this case, but not the Court's.*

While post-Compact conduct provides no—absolutely *zero*—support for the Court's interpretation, it provides substantial support for the one I have suggested. In *New Jersey* v. *Delaware II*, a case before this Court involving precisely the meaning of the Compact, the attorney general of

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*The post-Compact-conduct argument is not the only portion of the Court's reasoning that is a mismatch with its conclusion. So is its reliance upon Article VIII of the Compact, *ante*, at 611–612, 622—an argument so weak that it deserves only a footnote response. Article VIII provides that nothing in the Compact "shall affect the territorial limits, rights, or jurisdiction of either State . . . *except as herein expressly set forth*." 34 Stat. 860 (emphasis added). But New Jersey's riparian rights *are* expressly set forth, so the only question—the one I have addressed above—is what those rights consist of. But accepting the Court's overreading of Article VIII (which presumably requires each of the riparian rights to be named one by one), it is utterly impossible to see why Article VII is any more "expres[s]" in setting forth New Jersey's authority over wharves that lack "extraordinary character" than it is in setting forth her authority over wharves that possess it. Once again, the argument supports not the Court's holding, but rather Delaware's more expansive theory that it may regulate any and all wharves built from the Jersey shoreline. There is, to tell the truth, nothing whatever to support the Court's holding.

Delaware (obviously authorized to present the State's position on the point) conceded to the Special Master that "Article VII of the Compact is obviously merely a recognition of the rights of the riparian owners of New Jersey and a *cession* to the State of New Jersey by the State of Delaware of jurisdiction to regulate those rights." 1 NJ App. 123a (emphasis added). And at oral argument before the Special Master, Delaware's special counsel—Clarence A. Southerland, a former state attorney general and future Chief Justice of the Supreme Court of Delaware, see Delaware Bar in the Twentieth Century 375 (H. Winslow, A. Bookout, & P. Hannigan eds. 1994)—explained that "the Compact of 1905 expressly acknowledged the rights of the citizens of New Jersey, at least, by implication to wharf out" and that New Jersey possessed "all the right *to control the erection of those wharves and to say who shall erect them.*" 1 NJ App. 126a–1 (emphasis added). And in its Supreme Court brief in that litigation, Delaware assured the Court, without conditions, that "Delaware has never questioned the right of citizens of New Jersey to wharf out *to navigable water* nor can such a right be questioned now because it is clearly protected by the Compact of 1905 between the States." *Id.*, at 139a (emphasis added). Delaware's Supreme Court brief rejected New Jersey's argument that, if the Court found the boundary line to be the low-water mark on the New Jersey shore, "the interests of the riparian owners will be either destroyed or seriously prejudiced." *Id.*, at 140a. That concern, Delaware said, was misguided because the 1905 Compact "recognized the rights of riparian owners in the river to wharf out." *Ibid.* "The effect of Article VII of the Compact," the brief explained, "was that the State of Delaware recognized the rights of the inhabitants on the east side of the river to wharf out to navigable water. This right had never been questioned and was undoubtedly inserted to put beyond question the *riparian rights* (as distinguished from *title*) of land owners in New Jersey." *Id.*, at 141a. These concessions are

powerful indication that Delaware's understanding of the Compact was the same as the one I assert.

IV

Our opinion in *Virginia* v. *Maryland*, 540 U. S. 56 (2003), effectively decided this case. It rejected the very same assertion of a riverbed-owning State's supervening police-power authority over constructions into the river from a State that had been conceded riparian rights. That case involved two governing documents rather than (as here) only one. The first, a 1785 compact, provided:

> "'The citizens of each state respectively shall have full property in the shores of Potowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river.'" *Id.*, at 62.

The second, an arbitration award of 1877 that interpreted the earlier compact, read as follows:

> "'Virginia is entitled not only to full dominion over the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, agreeably to the compact of seventeen hundred and eighty-five.'" *Id.*, at 62–63.

We rejected Maryland's police-power authority to forbid Virginia's construction of a water intake structure that extended into Maryland territory, and held that "Virginia's right 'to erect . . . structures connected with the shore' is inseparable from, and 'necessary to,' the 'full enjoyment of her riparian ownership' of the soil to low-water mark." *Id.*,

at 72. Maryland, we observed, was "doubtless correct that if her sovereignty over the River was well settled as of 1785, we would apply a strong presumption against reading the Compact as stripping her authority to regulate activities on the River." *Id.*, at 67. But because the "scope of Maryland's sovereignty over the River was in dispute both before and after the 1785 Compact," no such presumption existed. *Id.*, at 68.

Today's opinion, quoting the Special Master, claims that the result in *Virginia* v. *Maryland* turned on "'the unique language of the compact and arbitration award involved in that case.'" *Ante*, at 617 (quoting Report 64, n. 118). But the case did not say that. And of course virtually every written agreement or award has "unique language," so if we could only extend to other cases legal principles pertaining to identical language our interpretive jurisprudence would be limited indeed. The documents in *Virginia* v. *Maryland* said in other words precisely what the Compact here said: that one of the States (there, Virginia, here, New Jersey) was given riparian rights, including the right to construct wharves and improvements. And the holding of the case was that those rights could be exercised free of police power or other interference by the State owning the riverbed.

The Court contends that in *Virginia* v. *Maryland* the arbitration award, rather than the compact, "was definitive," because it recognized the right of Virginia "'*qua* sovereign,'" and nowhere made the right "'subject to Maryland's regulatory authority.'" *Ante*, at 618 (quoting 540 U. S., at 72). But Article VII of the Compact here at issue likewise spoke of the rights of New Jersey "*qua* sovereign" (what else does the "exercise [of] riparian *jurisdiction*" mean?) and similarly did not make those rights subject to Delaware's regulatory authority. We stressed in *Virginia* v. *Maryland* that the salient factor in the interpretation of the compact (and hence in the arbitration award's interpretation of the compact) was that it was entered into (like the Compact here) by way of

settlement of a continuing boundary dispute. "If any inference at all is to be drawn from [the compact's] silence on the subject of regulatory authority," we said, "it is that each State was left to regulate the activities of her own citizens." *Id.*, at 67. *Virginia* v. *Maryland* effectively decided this case.

V

Finally, I must remark at greater length upon the Court's peculiar limitation upon New Jersey's wharfing-out rights—that it excludes wharves of "extraordinary character." But for that limitation, the Court's conclusion is precisely the same as my own: "Given the authority over riparian rights that the 1905 Compact preserves for New Jersey, Delaware may not impede ordinary and usual exercises of the right of riparian owners to wharf out from New Jersey's shore." *Ante*, at 622. The Court inexplicably concludes, however, that the liquefied natural gas (LNG) unloading wharf at stake in this litigation "goes well beyond the ordinary or usual." *Ibid.* Why? Because it possesses "extraordinary character."

To our knowledge (and apparently to the Court's, judging by its failure to cite any authority) the phrase has never been mentioned before in any case involving limitations on wharfing out. What in the world does it mean? Would a pink wharf or a zig-zagged wharf qualify? Today's opinion itself gives the phrase no content other than to say that "Delaware's classification of the proposed LNG unloading terminal as a '[h]eavy industry use' and a 'bulk product transfer facilit[y]' . . . has not been, and hardly could be, challenged as inaccurate." *Ante*, at 622–623. This rationale is bizarre. There is no reason why *any* designation by the Delaware Department of Natural Resources and Environmental Control would be relevant to, let alone controlling on, the meaning of the 1905 Compact; and no reason why New Jersey's authority under the 1905 Compact should turn on the state-law question whether Delaware "rationally categorize[s]" a

wharf under its own statutes, *ante*, at 623, n. 21. Wharves were commonly used for "heavy industry use" when the 1905 Compact was adopted, and their primary commercial use was to transfer bulk cargoes. One roughly contemporaneous book on the design and building of wharves in America included information on appropriate pavement material to enable use of trucks on wharves, the proper method of laying down railroad tracks, and the construction of hatch cranes for unloading cargo. See C. Greene, Wharves and Piers: Their Design, Construction, and Equipment 191–194, 206–215 (1917). The Court gives no reason why the terminal's character as a "[h]eavy industry use" and a "bulk product transfer facilit[y]" matters in the slightest. Indeed, the Court does not take its state-law reason for "extraordinary character" seriously, conceding that Delaware could not regulate an *identical* wharf for the "bulk product transfer" of "tofu and bean sprouts," *ante*, at 623, n. 21.

Apart from the Delaware Department's "[h]eavy industry use" and "bulk product transfer" designations, the Court cites, as support for its conclusion that this wharf is of "extraordinary character," its own factual background section describing the wharf. See *ante*, at 622–623 (citing *ante*, at 606–607). It is not clear which, if any, of the facts discussed there the Court claims to be relevant, and I am forced to speculate on what they might be.

Could it be the size of the wharf, which is 2,000 feet long, see *ante*, at 606, and extends some 1,455 feet into Delaware territory, see Brief for BP America Inc. et al. as *Amici Curiae* 1–2? But the Court cites *not a single source* for this length limitation upon wharfing out. We did not intimate, in holding in *Virginia* v. *Maryland* that Virginia could authorize construction of a water intake pipe extending 725 feet from its shoreline into Maryland, see 540 U. S., at 63, that the result turned on the length of the pipe. As I have discussed, the common law *did* establish a size limitation for wharves: the wharf could not be extended so far as to interfere need-

lessly with the public's "right of navigation" in navigable waters. 1 Farnham § 111, at 521. Wharves constructed to access the water could "project to a distance from the shore necessary to reach water which shall float vessels, *the largest as well as the smallest.*" *Id.*, at 522 (emphasis added). Delaware has not claimed that the wharf in this case will interfere with navigation of the river, which is approximately one mile wide at this location, see Brief for BP America Inc. et al. as *Amici Curiae* 2. And the record reveals that New Jersey, at least, anticipated that wharves on its side of the river could extend as far as the wharf in this case by establishing pierhead lines in 1877 and 1916 that extended "*below* low water mark at distances varying from 378 to 3,550 feet." 1 NJ App. 135a; see also 3 *id.*, at 369a, 376a (affidavit of Richard G. Castagna). (Pierhead lines mark the permissible "outshore limit of structures of any kind." Greene, *supra*, at 27.)

Could the fact rendering this a wharf of "extraordinary character" be that its construction would require the dredging of 1.24 million cubic yards of soil within Delaware's territory? *Ante*, at 606–607. This is suggested, perhaps, by the portion of the decree which says that "Delaware acted within the scope of its governing authority to prohibit unreasonable uses of the . . . soil within the twelve-mile circle." *Ante*, at 624; see also *ante*, at 607, n. 8. But no again. Although the record contains no evidence of the dredge volumes required to construct the wharves on the river at the time of the Compact's adoption, it does show that an 1896 navigational improvement required the dredging of 35 million cubic yards from the Delaware River, and a 1907 dredging at Cape May Harbor, New Jersey, removed 19.7 million cubic yards. 7 NJ App. 1224a, 1234a (affidavit of J. Richard Weggel). At the very least, the dredging of 1.24 million cubic yards "would have been familiar to or ascertainable by individuals interested in riparian uses or structures at the time the Compact was signed or ratified." *Id.*, at 1227a. I do not

know what to make of the Court's response that the instances of dredging that I have cited involved "public works." *Ante*, at 607, n. 8. Is that a limitation upon the Court's holding—only *private* wharves of "extraordinary character" can be regulated by Delaware? But in fact dredging seems to have nothing to do with the issue, since (once again) the Court acknowledges that the same wharf for tofu and bean sprouts would be OK.

Could the determinative fact be that the wharf would service "[s]upertankers with capacities of up to 200,000 cubic meters (more than 40 percent larger than any ship then carrying natural gas)," *ante*, at 606; that these ships "would pass densely populated areas" and require establishment of "a moving safety zone [that] would restrict other vessels 3,000 feet ahead and behind, and 1,500 feet on all sides," *ante*, at 606, n. 7? This is suggested, perhaps, by the portion of the decree which says that "Delaware acted within the scope of its governing authority to prohibit unreasonable uses of the river . . . within the twelve-mile circle." *Ante*, at 624. But surely not. Whatever power Delaware has to restrict traffic on the waters of the United States (a question not presented by this case, though one that seems not to inhibit the decree's blithe positing of state "authority to prohibit unreasonable uses of the river," *ibid.*), it has no bearing on whether New Jersey can build the *wharf* without Delaware's interference.

Could the determinative fact be that the wharf will be used to transport liquefied natural gas, which is dangerous? No again. The Court cites no support, and I am aware of none, for the proposition that the common law forbade a wharf owner to load or unload hazardous goods. At the time of the Compact's adoption, congressional sources reported that the Delaware River was used to transport, among other items, coal tar and pitch, sulfur, gunpowder, and explosives. Annual Report of the Chief of Engineers, United States Army, H. R. Doc. No. 22, 59th Cong., 2d Sess., 1031–1033

(App. H) (1906) (tabulating commerce on the Delaware River by item in 1904 and 1905). Books published some time after the adoption of the Compact discuss the proper handling of seaborne "dangerous goods," including liquids such as benzene, petroleum, and turpentine. See J. Aeby, Dangerous Goods (2d ed. 1922); R. MacElwee & T. Taylor, Wharf Management: Stevedoring and Storage 41, 221 (1921). There is not a shred of evidence that the parties to the Compact understood that New Jersey and Delaware would not be authorized to grant riparian rights for the loading and unloading of goods that are—under some amorphous and unexplained criteria—dangerous.

I say that none of these factors has any bearing upon whether, at law, the wharfing out at issue here is anything more than the usual and ordinary exercise of a riparian right. I am not so rash as to suggest, however, that these factors had nothing to do with the Court's decision. After all, our environmentally sensitive Court concedes that if New Jersey had approved a wharf of equivalent dimensions, to accommodate tankers of equivalent size, carrying tofu and bean sprouts, Delaware could not have interfered. See *ante*, at 623, n. 21.

* * *

According to one study, construction activities on the LNG facility in this case would have created more than 1,300 new jobs, added $277 million to New Jersey's gross state product, and produced $13 million in state and local tax revenues. J. Seneca et al., Economic Impacts of BP's Proposed Crown Landing LNG Terminal 65 (Apr. 2007), online at http://www.policy.rutgers.edu/news/reports/other/BPCrownLanding.pdf (as visited Mar. 28, 2008, and available in Clerk of Court's case file). Operation of the facility was projected to generate 231 permanent jobs, and more than $88 million in state and local tax revenues over a 30-year period. *Ibid.* Its delivery capacity would represent 15 percent of the current consumption of natural gas in the region. *Id.*, at 66. In

holding that Delaware may veto the project, the Court owes New Jersey—not to mention an energy-starved Nation—something more than its casual and unsupported statements that the wharf possesses "extraordinary character" and "goes well beyond the ordinary or usual."

Today's decision does not even have the excuse of achieving a desirable result. If one were to design, *ex ante*, the socially optimal allocation of the power to permit and forbid wharfing out, surely that power would be lodged with the sovereign that stands most to gain from the benefits of a wharf, and most to lose from its environmental and other costs. Unquestionably, that is the sovereign with jurisdiction over the land from which the wharf is extended. Delaware and New Jersey doubtless realized this when they agreed in 1905 that each of them would have jurisdiction over riparian rights on its own side of the river. The genius of today's decision is that it creates irrationality where sweet reason once prevailed—straining mightily, against all odds, to ensure that the power to permit or forbid "heavy industry use" wharves in New Jersey shall rest with Delaware, which has no interest whatever in facilitating the delivery of goods to New Jersey, which has relatively little to lose from the dangerous nature of those goods or the frequency and manner of their delivery, and which may well have an interest in forcing the inefficient location of employment- and tax-producing wharves on its own shore. It makes no sense.

Under its decree, "[t]he Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as it may from time to time deem necessary or desirable to give proper force and effect to this Decree or to effectuate the rights of the parties." *Ante*, at 624. This could mean, I suppose, that we can anticipate a whole category of original actions in this Court that will clarify, wharf by wharf, what is a wharf of "extraordinary character." (Who would have thought that such utterly indefinable and unpredictable complexity lay hidden within the words of the

Compact?) More likely, however, prospective builders of "heavy industry use" wharves from the New Jersey shore—of whatever size—will apply to Delaware and simply go elsewhere if rejected.

The wharf at issue in this litigation would have been viewed as an ordinary and usual riparian use at the time the two States entered into the 1905 Compact. Delaware accordingly may not prohibit its construction. I respectfully dissent from the Court's judgment to the contrary.

Reporter's Note

The next page is purposely numbered 801. The numbers between 646 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 1, 2007, THROUGH
APRIL 14, 2008

OCTOBER 1, 2007

Certiorari Granted—Vacated and Remanded

No. 06–1264. KEISLER, ACTING ATTORNEY GENERAL *v.* HONG YIN GAO. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gonzales* v. *Thomas*, 547 U. S. 183 (2006) *(per curiam)*. Reported below: 440 F. 3d 62.

No. 06–11085. MAY *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.;

No. 06–11312. CASTANEDA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist.; and

No. 06–11735. REMEDIOS MUNOZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Cunningham* v. *California*, 549 U. S. 270 (2007).

No. 06–11361. COHEN *v.* CORRECTIONS CORPORATION OF AMERICA. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Jones* v. *Bock*, 549 U. S. 199 (2007).

Certiorari Dismissed

No. 06–11036. STRINGER *v.* MAY ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 212 Fed. Appx. 375.

No. 06–11269. AINSWORTH *v.* BERRIGAN, EXECUTOR OF THE ESTATE OF MAJEAU, DECEASED. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–11354. WOJNICZ *v.* METRISH, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–11440. CRANE *v.* FORSYTH COUNTY, GEORGIA. Ct. App. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–11443. VEALE *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 06–11623. FLYNN *v.* ILLINOIS DEPARTMENT OF HUMAN RIGHTS ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 06–11812. SANTIAGO-LUGO *v.* UNITED STATES. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–5090. MAYBERRY *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–5351. DORSEY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–5633. HAMILTON *v.* JACKSON ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule

38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 07–5750. TURNER *v.* DONNELLY ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 222 Fed. Appx. 136.

No. 07–5757. WATTLETON *v.* UNITED STATES DEPARTMENT OF PROBATION ET AL. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 223 Fed. Appx. 9.

No. 07–6034. WILLIAMS *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari dismissed as moot. Reported below: 496 F. 3d 1210.

*Miscellaneous Orders**

No. 07A142. RODRIGUEZ *v.* SUPREME COURT OF VIRGINIA ET AL. Sup. Ct. Va. Application for preliminary injunction, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. 06M91. ELLIS *v.* UNITED STATES; and

No. 06M98. KROUNER *v.* UNITED STATES TAX COURT. Renewed motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 06M104. GOMEZ *v.* TEXAS. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 06M105. EAGLE *v.* ARKANSAS DEPARTMENT OF REVENUE;

No. 07M1. PRESTON *v.* TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES;

No. 07M2. MONTANYE *v.* WISSAHICKON SCHOOL DISTRICT ET AL.;

No. 07M3. TERRELL *v.* HOUSEHOLD REALTY CORP.;

No. 07M4. CARR *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION;

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*For revisions to the Rules of this Court effective this date, see 551 U. S. 1195.

No. 07M6. SELVY *v.* DETROIT CITY COUNCIL;

No. 07M7. WOMACK *v.* BRADLEY;

No. 07M8. SMITH *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, ON BEHALF OF M. S. J., A MINOR;

No. 07M9. CHRISTAKIS *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL.;

No. 07M10. RICHARDS ET AL. *v.* MARSAW ET AL.;

No. 07M11. ROBERTS *v.* UNITED STATES;

No. 07M12. MOORE *v.* RICCI, ASSOCIATE ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL.;

No. 07M13. RAND ET UX. *v.* UNITEDAUTO GROUP, INC., ET AL.; and

No. 07M14. BRENT *v.* DEPARTMENT OF JUSTICE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 07M5. IN RE AL-GHIZZAWI. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted. Motion for leave to file petition for writ of habeas corpus under seal granted. Motion to expedite consideration of petition for writ of habeas corpus denied.

No. 07M15. CASTANEDA *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and reimbursement of expenses granted, and the River Master is awarded a total of $5,995.61 for the period July 1, 2006, through June 30, 2007, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 549 U. S. 806.]

No. 138, Orig. (06A1150). SOUTH CAROLINA *v.* NORTH CAROLINA. Motion for leave to file bill of complaint granted. Defendant is allowed 30 days within which to file an answer. Application for preliminary injunction, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. 06–179. RIEGEL ET UX. *v.* MEDTRONIC, INC. C. A. 2d Cir. [Certiorari granted, 551 U. S. 1144.] Motion of Donna Riegel, the administrator of the estate of Charles R. Riegel, to be substituted in place of Charles R. Riegel, deceased, granted. The exercise of

this Court's power to grant an untimely motion to substitute a party is not unprecedented. *State Farm Mut. Automobile Ins. Co.* v. *Campbell*, 537 U. S. 1042 (2002); see also *Schacht* v. *United States*, 398 U. S. 58, 64 (1970) ("The procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional and can be relaxed by the Court in the exercise of its discretion . . . "); R. Stern, E. Gressman, S. Shapiro, & K. Geller, Supreme Court Practice 350 (8th ed. 2002).

THE CHIEF JUSTICE and JUSTICE SCALIA would deny the motion because it was filed more than six months after petitioner Charles R. Riegel's death. See this Court's Rule 35.1 ("If the substitution of a representative of the deceased is not made within six months after the death of the party, *the case shall abate*" (emphasis added)). The fact that this Court's Rule 35.1 is not jurisdictional is not a reason to ignore it, particularly since here, unlike in *Campbell*, *supra*, the motion was opposed by the respondent.

No. 06–887. CITY OF REVERE, MASSACHUSETTS, ET AL. *v.* T&D VIDEO, INC., DBA MOONLITE READER, 550 U. S. 968. Motion of respondent for attorney's fees and costs is referred to the Appeals Court of Massachusetts for adjudication.

No. 06–1039. ESTATE OF ROXAS ET AL. *v.* PIMENTEL ET AL.; and

No. 06–1204. REPUBLIC OF THE PHILIPPINES ET AL. *v.* PIMENTEL ET AL. C. A. 9th Cir. Motion of respondent Mariano J. Pimentel to set a deadline for submission of an *amicus curiae* brief by the Solicitor General denied.

No. 06–1196. AL ODAH, NEXT FRIEND OF AL ODAH, ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. [Certiorari granted, 551 U. S. 1161.] Motion of International Law Scholars for leave to file a brief as *amici curiae* granted.

No. 06–1398. AT&T PENSION BENEFIT PLAN, AS SUCCESSOR TO THE AMERITECH MANAGEMENT PENSION PLAN *v.* CALL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 7th Cir.;

No. 06–1458. GEDDES ET UX., INDIVIDUALLY AND AS PARENTS AND GUARDIANS OF GEDDES, A MINOR, ET AL. *v.* UNITED STAFFING ALLIANCE EMPLOYEE MEDICAL PLAN ET AL. C. A. 10th Cir.; and

No. 06–1595. CRAWFORD *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE. C. A. 6th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 06–1505. MEACHAM ET AL. *v.* KNOLLS ATOMIC POWER LABORATORY, AKA KAPL, INC., ET AL. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06–9729. SIVAK *v.* SONNEN ET AL. Sup. Ct. Idaho. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [550 U. S. 916] denied.

No. 06–9730. SIVAK *v.* DEFENDANT A. Sup. Ct. Idaho. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [550 U. S. 916] denied.

No. 06–9737. HARRIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [550 U. S. 916] denied.

No. 06–11204. LAGLER *v.* HEALTH FIRST, INC., ET AL. C. A. 11th Cir.;

No. 06–11802. EASTMAN *v.* TROPICANA PRODUCTS, INC. C. A. 11th Cir.;

No. 06–12019. RODRIGUEZ *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 4th Cir.;

No. 07–5142. HARVEY *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. 2d Cir.;

No. 07–5184. CLARK *v.* PARAGON SYSTEMS, INC. C. A. 5th Cir.; and

No. 07–5938. CAVETT *v.* GATES, SECRETARY OF DEFENSE, ET AL. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 22, 2007, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 06–11665. IN RE HICKS;

No. 06–11867. IN RE ALEXANDER;

No. 07–174. IN RE BELBACHA;

No. 07–5016. IN RE DAVIS;
No. 07–5031. IN RE TATUM;
No. 07–5034. IN RE NADDI;
No. 07–5146. IN RE BOOMER;
No. 07–5207. IN RE GOLDEN;
No. 07–5211. IN RE WELLS;
No. 07–5218. IN RE JONES;
No. 07–5259. IN RE TOLIVER;
No. 07–5260. IN RE BENAVIDES;
No. 07–5275. IN RE ENIGWE;
No. 07–5294. IN RE PHAULS;
No. 07–5358. IN RE PASCHAL;
No. 07–5393. IN RE MCKANIC;
No. 07–5608. IN RE BRIGHT;
No. 07–5619. IN RE WILMORE;
No. 07–5635. IN RE MCQUIDDY;
No. 07–5717. IN RE MCCREARY;
No. 07–5763. IN RE MURRAY;
No. 07–5916. IN RE DEMARSH;
No. 07–6065. IN RE UNDERWOOD;
No. 07–6083. IN RE ALFORD;
No. 07–6089. IN RE TEMPLE; and
No. 07–6178. IN RE CLEMONS. Petitions for writs of habeas corpus denied.

No. 07–5519. IN RE NIMMONS. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 06–1492. IN RE SANDERS;
No. 06–1572. IN RE SHAWVER;
No. 06–1705. IN RE PO KEE WONG;
No. 06–11315. IN RE LONG;
No. 06–11559. IN RE WILLIAMS;
No. 06–11672. IN RE MCCULLOUGH;

No. 06–11707. IN RE YOUNG;
No. 06–11764. IN RE COYNER;
No. 06–11988. IN RE WILLIAMS;
No. 06–11995. IN RE BURGLUND;
No. 06–12004. IN RE MERRITT;
No. 06–12030. IN RE CORRIETTE;
No. 06–12031. IN RE ROMAN;
No. 06–12093. IN RE RYLEE;
No. 06–12105. IN RE SHERMAN;
No. 07–5008. IN RE MARKHAM;
No. 07–5124. IN RE MURRAY;
No. 07–5154. IN RE SMITH;
No. 07–5177. IN RE BARKSDALE;
No. 07–5468. IN RE ROUTIE;
No. 07–5506. IN RE THOMAS;
No. 07–5508. IN RE BAER;
No. 07–5524. IN RE SALTERS;
No. 07–5536. IN RE BROWN;
No. 07–5843. IN RE BROGDON;
No. 07–5878. IN RE COLEMAN; and
No. 07–5922. IN RE HAFED. Petitions for writs of mandamus denied.

No. 06–1671. IN RE SHEMONSKY;
No. 07–229. IN RE SHEMONSKY;
No. 07–5013. IN RE ROGERS; and
No. 07–5029. IN RE TWITTY. Petitions for writs of mandamus denied. JUSTICE ALITO took no part in the consideration or decision of these petitions.

No. 06–11164. IN RE SKILLERN;
No. 06–12111. IN RE SKILLERN; and
No. 07–5410. IN RE WOOD. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus dismissed. See this Court's Rule 39.8.

No. 06–11187. IN RE GAY. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Mar-*

tin v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 06–11295. IN RE ALLEN;
No. 06–11973. IN RE DUBOSE;
No. 07–49. IN RE SON HUI CHOI;
No. 07–118. IN RE CLUCK; and
No. 07–5459. IN RE GRISSON. Petitions for writs of mandamus and/or prohibition denied.

No. 07–5367. IN RE VAZQUEZ. Petition for writ of mandamus and/or prohibition denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 07–5119. IN RE AWALA. Petition for writ of prohibition denied.

Certiorari Denied

No. 06–19. FISHER *v.* FISHER ET UX. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 06–945. PABLO ET UX. *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 650.

No. 06–999. FAULKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 196.

No. 06–1139. RUTHERFORD ET AL. *v.* CITY OF CLEVELAND, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 179 Fed. Appx. 366.

No. 06–1148. COLEMAN *v.* JACKS. Ct. App. Ark. Certiorari denied.

No. 06–1171. KOUTNIK *v.* BROWN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 456 F. 3d 777.

No. 06–1183. TESFAMICHAEL ET UX. *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 3d 109.

No. 06–1187. VEITCH *v.* WINTER, SECRETARY OF THE NAVY, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 471 F. 3d 124.

No. 06–1193. GAMBLA *v.* WOODSON. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 367 Ill. App. 3d 441, 853 N. E. 2d 847.

No. 06–1248. COLISEUM SQUARE ASSN., INC., ET AL. *v.* JACKSON, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 3d 215.

No. 06–1251. GOLPHIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 945 So. 2d 1174.

No. 06–1282. CRANFORD ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 466 F. 3d 955.

No. 06–1289. LEWIS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 458 F. 3d 1372.

No. 06–1295. DAVIS ET AL. *v.* WINSLOW ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 807.

No. 06–1308. LEGAL SERVICES FOR NEW YORK CITY ET AL. *v.* LEGAL SERVICES CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 462 F. 3d 219.

No. 06–1312. AVALOS-GUTIERREZ *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 06–1319. NEWCOMB, A MINOR, BY AND THROUGH HER NEXT FRIEND AND NATURAL FATHER, NEWCOMB, ET AL. *v.* BAIR ET AL. Ct. App. Ariz. Certiorari denied.

No. 06–1325. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 473 F. 3d 1115.

No. 06–1328. TYCO HEALTHCARE GROUP LP ET AL. *v.* MEDRAD, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 466 F. 3d 1047.

No. 06–1331. GERKE EXCAVATING, INC. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 464 F. 3d 723.

No. 06–1332. GILL ET UX. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 471 F. 3d 204.

No. 06–1343. COLLIER *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 473 F. 3d 444.

No. 06–1347. DUFF ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 464 F. 3d 773.

No. 06–1368. HARVEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 946 So. 2d 937.

No. 06–1369. GUEVARA *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 472 F. 3d 972.

No. 06–1371. NDRECA, AKA GORJA, ET UX. *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 06–1382. MCCONVILLE *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 465 F. 3d 780.

No. 06–1384. KALAYCIOGLU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 825.

No. 06–1397. PLANET BINGO, LLC, ET AL. *v.* GAMETECH INTERNATIONAL, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 472 F. 3d 1338.

No. 06–1399. NORTH CAROLINA SCHOOL BOARDS ASSN., INC., ET AL. *v.* RIPELLINO ET AL.; and

No. 06–1511. JOHNSTON COUNTY BOARD OF EDUCATION *v.* RIPELLINO ET AL. Sup. Ct. N. C. Certiorari denied. Reported below: 361 N. C. 214, 639 S. E. 2d 441.

No. 06–1402. WILLIAMS *v.* HOME DEPOT U. S. A., INC. C. A. 2d Cir. Certiorari denied. Reported below: 196 Fed. Appx. 47.

No. 06–1410. IDAHO *v.* ESTRADA. Sup. Ct. Idaho. Certiorari denied. Reported below: 143 Idaho 558, 149 P. 3d 833.

No. 06–1411. SNOW-ERLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 3d 804.

No. 06–1415. DE LA PAZ SANCHEZ *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 3d 133.

No. 06–1418. CHRISTIE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 332.

No. 06–1421. COOK *v.* HAYS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 295.

No. 06–1425. SMITH *v.* LOS ANGELES METROPOLITAN TRANSIT AUTHORITY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 567.

No. 06–1426. JACKSON *v.* FISHER ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 981 So. 2d 1181.

No. 06–1437. CLIENTS AND FORMER CLIENTS OF BARON & BUDD, P. C., ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 3d 670.

No. 06–1438. HUDSON, CHAIRMAN, PUBLIC UTILITY COMMISSION OF TEXAS, ET AL. *v.* AEP TEXAS NORTH CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 3d 581.

No. 06–1439. LAURENT *v.* HERKERT, UNITED STATES TRUSTEE. C. A. 11th Cir. Certiorari denied. Reported below: 196 Fed. Appx. 771.

No. 06–1444. UNION PACIFIC RAILROAD CO. *v.* HEDGECORTH. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 210 S. W. 3d 220.

No. 06–1445. JEFFREY G. *v.* LISA S. Sup. Ct. N. H. Certiorari denied.

No. 06–1446. JEFFREY G. *v.* LISA S. Sup. Jud. Ct. Me. Certiorari denied.

No. 06–1448. SY *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 444.

No. 06–1449. ABRAHAMS, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF ABRAHAMS *v.* JACOB HEALTH CARE CENTER, LLC, ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 06–1450. SAMBRANO ET UX. *v.* HERITAGE TRAILS HOMEOWNERS ASSN. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 365 Ill. App. 3d 1114, 927 N. E. 2d 339.

No. 06–1451. JUNGIL LEE, ESTATE REPRESENTATIVE FOR JIN AH LEE, DECEASED, ET AL. *v.* ANC CAR RENTAL CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 493.

No. 06–1459. BOGGAN *v.* MISSISSIPPI CONFERENCE OF THE UNITED METHODIST CHURCH. C. A. 5th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 352.

No. 06–1461. FANCHER *v.* CSX TRANSPORTATION, INC. Cir. Ct. Cabell County, W. Va. Certiorari denied.

No. 06–1464. O'CALLAGHAN ET AL. *v.* SHIRAZI ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 204 Fed. Appx. 35.

No. 06–1466. BARNES *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 473 F. 3d 1356.

No. 06–1467. B. WILLIS, C. P. A., INC. *v.* PUBLIC SERVICE COMPANY OF OKLAHOMA. Ct. Civ. App. Okla. Certiorari denied. Reported below: 155 P. 3d 845.

No. 06–1469. PIPER *v.* DEPARTMENT OF JUSTICE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 222 Fed. Appx. 1.

No. 06–1473. JOSEPH ET UX. *v.* SALT LAKE CITY, UTAH, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 692.

No. 06–1476. DUFF *v.* NEVADA ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–1478. ALDERMAN *v.* TERRY, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 468 F. 3d 775.

No. 06–1479. CANATELLA *v.* STOVITZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 515.

No. 06–1481. MCNAMARA ET AL. *v.* CITY OF RITTMAN, OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 3d 633.

No. 06–1482. OKLAHOMA CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS ET AL. *v.* FOGARTY, CHIEF EXECUTIVE OFFICER OF OKLAHOMA HEALTH CARE AUTHORITY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 472 F. 3d 1208.

No. 06–1483. TECCHIO ET UX. *v.* CITICORP MORTGAGE, INC. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–1484. KLEPPER *v.* CITY OF PAGE, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 692.

No. 06–1486. HAGER *v.* MAY DEPARTMENT STORES CO. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 143 Cal. App. 4th 1223, 49 Cal. Rptr. 3d 892.

No. 06–1487. VAN AELSTYN *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 181 Vt. 274, 917 A. 2d 471.

No. 06–1489. ANAYA ET AL. *v.* TRAYLOR BROS., INC. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 3d 251.

No. 06–1490. ROTH ET AL. *v.* GREEN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 466 F. 3d 1179.

No. 06–1493. TEMPLETON *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 458.

No. 06–1494. LINDER *v.* JOHNSON. Ct. App. Ark. Certiorari denied.

No. 06–1495. LEVI ET AL. *v.* O'CONNELL, SUPERINTENDENT OF PUBLIC INSTRUCTION, CALIFORNIA DEPARTMENT OF EDUCATION. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 144 Cal. App. 4th 700, 50 Cal. Rptr. 3d 691.

No. 06–1496. G & T TERMINAL PACKAGING CO., INC., ET AL. *v.* DEPARTMENT OF AGRICULTURE. C. A. 2d Cir. Certiorari denied. Reported below: 468 F. 3d 86.

No. 06–1500. MARKU ET AL. *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 454.

No. 06–1501. WILLIAMS ET AL. *v.* KING, ATTORNEY GENERAL OF ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 478 F. 3d 1316.

No. 06–1502. KOFFLEY *v.* KOFFLEY. Ct. Sp. App. Md. Certiorari denied. Reported below: 171 Md. App. 746.

No. 06–1506. VITOLO *v.* MENTOR CORP. C. A. 2d Cir. Certiorari denied. Reported below: 213 Fed. Appx. 16.

No. 06–1507. PHILADELPHIA HOUSING AUTHORITY *v.* HENDERSON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 214 Fed. Appx. 209.

No. 06–1510. WESTFALIA-SURGE, INC. *v.* MARIPOSA FARMS, LLC. C. A. 10th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 760.

No. 06–1512. MINNIFIELD *v.* LOUISIANA DEPARTMENT OF EDUCATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 277.

No. 06–1513. REGATTA BAY LTD. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 209 Fed. Appx. 976.

No. 06–1517. PAPPAS ET AL. *v.* GREEK ORTHODOX ARCHDIOCESE OF NORTH AND SOUTH AMERICA. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 30 App. Div. 3d 286, 817 N. Y. S. 2d 270.

No. 06–1519. RYAN *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 528.

No. 06–1522. LAURENT *v.* SELECT PORTFOLIO SERVICING, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 193 Fed. Appx. 831.

No. 06–1523. MEZA-HERNANDEZ *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 746.

No. 06–1524. NICHOLSON *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied. Reported below: 366 S. C. 568, 623 S. E. 2d 100.

No. 06–1526. CARPAD, INC., ET AL. *v.* BROOKSTONE, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 200 Fed. Appx. 989.

No. 06–1528. COCHRAN ET AL. *v.* CINCINNATI INSURANCE CO. C. A. 11th Cir. Certiorari denied.

No. 06–1530. PATTERSON *v.* HASKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 470 F. 3d 645.

No. 06–1532. BULLOCK *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 213 S. W. 3d 142.

No. 06–1537. ISLAMIC AMERICAN RELIEF AGENCY *v.* KEISLER, ACTING ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 477 F. 3d 728.

No. 06–1539. MARKOVICH ET UX., PARENTS OF MARKOVICH *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 477 F. 3d 1353.

No. 06–1540. MALLINCKRODT INC. *v.* MAINE PEOPLE'S ALLIANCE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 471 F. 3d 277.

No. 06–1541. JONAS *v.* TALLEY. Ct. App. S. C. Certiorari denied.

No. 06–1542. NICHOLS *v.* BURLINGTON NORTHERN & SANTA FE RAILWAY CO. Ct. App. Colo. Certiorari denied. Reported below: 148 P. 3d 212.

No. 06–1543. SASOUVONG *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 129 Wash. App. 1035.

No. 06–1546. LANSING *v.* FAIRFAX HOSPITAL. Sup. Ct. Va. Certiorari denied.

No. 06–1547. MARCUCCI ET UX. *v.* ESB BANK, SUCCESSOR BY MERGER TO TROY HILL FEDERAL SAVINGS BANK, FKA TROY HILL FEDERAL SAVINGS & LOAN ASSN. Super. Ct. Pa. Certiorari denied. Reported below: 876 A. 2d 473.

No. 06–1548. COOK *v.* COURT OF APPEALS OF COLORADO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 616.

No. 06–1549. E & L CONSULTING, LTD., DBA C. B. C. LUMBER CO., ET AL. *v.* DOMAN INDUSTRIES LTD. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 472 F. 3d 23.

No. 06–1550. CATHOLIC CHARITIES OF THE DIOCESE OF ALBANY ET AL. *v.* DINALLO, SUPERINTENDENT, NEW YORK STATE

INSURANCE DEPARTMENT. Ct. App. N. Y. Certiorari denied. Reported below: 7 N. Y. 3d 510, 859 N. E. 2d 459.

No. 06–1555. BARTISS-EARLEY *v.* DURKIN VILLAGE PLAINVILLE, LLC, ET AL. App. Ct. Conn. Certiorari denied.

No. 06–1556. DUFF *v.* NEVADA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 676.

No. 06–1558. VARN *v.* GEREN, ACTING SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 197.

No. 06–1559. TITAN DISTRIBUTION, INC., ET AL. *v.* CHALFANT. C. A. 8th Cir. Certiorari denied. Reported below: 475 F. 3d 982.

No. 06–1560. WALLACE *v.* ABELL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 217 Fed. Appx. 124.

No. 06–1561. DELFINO ET AL. *v.* AGILENT TECHNOLOGIES, INC. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 145 Cal. App. 4th 790, 52 Cal. Rptr. 3d 376.

No. 06–1562. GOLIN ET AL. *v.* ALLENBY ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–1563. HALTOM *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 156 P. 3d 792.

No. 06–1564. GRAY *v.* BLANTON ET AL. Ct. App. Ga. Certiorari denied.

No. 06–1565. TAYLOR *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–1566. WISTER *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. Fed. Cir. Certiorari denied.

No. 06–1567. MAJOR *v.* WASHINGTON STATE BAR ASSN. Sup. Ct. Wash. Certiorari denied.

No. 06–1569. MARYLAND RECLAMATION, INC. *v.* RAMBLEWOOD HOMEOWNER'S ASSN. ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 169 Md. App. 750.

No. 06–1570. PENZIEN ET UX. *v.* VILLAGE OF CAPAC, MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–1571. HUTCHINSON ET AL. *v.* PFEIL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 765.

No. 06–1573. RUSSELL *v.* RUSSELL. Sup. Ct. Va. Certiorari denied.

No. 06–1574. ADAMS *v.* GROESBECK INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 3d 688.

No. 06–1575. CITY OF BRIDGEPORT, CONNECTICUT, ET AL. *v.* RUSSO. C. A. 2d Cir. Certiorari denied. Reported below: 479 F. 3d 196.

No. 06–1576. EM LTD. ET AL. *v.* REPUBLIC OF ARGENTINA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 473 F. 3d 463.

No. 06–1577. PRINCE GEORGE'S COUNTY, MARYLAND, ET AL. *v.* MILLER. C. A. 4th Cir. Certiorari denied. Reported below: 475 F. 3d 621.

No. 06–1578. ANDALUSIA DISTRIBUTING CO., INC., ET AL. *v.* R. J. REYNOLDS TOBACCO CO. (Reported below: 477 F. 3d 854); and ANDALUSIA DISTRIBUTING CO., INC., ET AL. *v.* PHILIP MORRIS USA INC. (219 Fed. Appx. 398). C. A. 6th Cir. Certiorari denied.

No. 06–1579. HENDERSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 521.

No. 06–1580. CAMPBELL *v.* SULLINS. Cir. Ct. Macomb County, Mich. Certiorari denied.

No. 06–1581. TRAFFORD DISTRIBUTION CENTER *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied. Reported below: 478 F. 3d 172.

No. 06–1583. PELTO *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 949 So. 2d 241.

No. 06–1584. MARTINEZ-CUADRA *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 571.

No. 06–1585. LATHAM *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 06–1587. VASQUEZ *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 208 Fed. Appx. 184.

No. 06–1588. CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION *v.* CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 3d 809.

No. 06–1589. LANARD TOYS, INC., ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 468 F. 3d 405.

No. 06–1590. PATTERSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–1591. REICH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 479 F. 3d 179.

No. 06–1592. SULLIVAN *v.* PENDER COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 198.

No. 06–1596. CASS ET AL. *v.* STEPHENS ET AL. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 156 S. W. 3d 38.

No. 06–1597. WALLACE *v.* WRAY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 217 Fed. Appx. 127.

No. 06–1598. LOVETT *v.* LOVETT. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1214, 931 N. E. 2d 364.

No. 06–1599. COY *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 06–1600. RIND *v.* TRANSWORLD SYSTEMS, INC., DBA CREDIT MANAGEMENT SERVICES AS ASSIGNEE OF JOM ENTERPRISES, INC., ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 79, 178 P. 3d 797.

No. 06–1601. HYNES, INDIVIDUALLY AND AS DISTRICT ATTORNEY FOR THE COUNTY OF KINGS, NEW YORK *v.* REULAND. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 3d 409.

No. 06–1602. PHILLIPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 3d 215.

No. 06–1605. RENO A & E *v.* EBERLE DESIGN, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 215 Fed. Appx. 992.

No. 06–1606. AVILLA ET AL. *v.* THOMPSON. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 06–1607. ABUSHEIKH *v.* KEISLER, ACTING ATTORNEY GENERAL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 Fed. Appx. 56.

No. 06–1608. GLANTON, ON BEHALF OF ALCOA PRESCRIPTION DRUG PLAN AND ALL OTHER SIMILARLY SITUATED PLANS, ET AL. *v.* ADVANCEPCS INC. C. A. 9th Cir. Certiorari denied. Reported below: 465 F. 3d 1123.

No. 06–1609. HAKALA *v.* J. P. MORGAN SECURITIES, INC. C. A. 2d Cir. Certiorari denied. Reported below: 186 Fed. Appx. 131.

No. 06–1610. GEORGE *v.* ARORA ET AL. Ct. App. Ohio, Stark County. Certiorari denied.

No. 06–1611. HAYS ET AL. *v.* JONES. Ct. App. Tenn. Certiorari denied.

No. 06–1612. HAMMITT ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 209 Fed. Appx. 986.

No. 06–1615. WALKER *v.* SELDMAN ET AL. Ct. App. D. C. Certiorari denied.

No. 06–1617. GILLES *v.* BLANCHARD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 477 F. 3d 466.

No. 06–1618. MINCY *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–1619. GOOD NEWS EMPLOYEE ASSN. ET AL. *v.* HICKS, INDIVIDUALLY AND AS DEPUTY EXECUTIVE DIRECTOR, COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY OF THE CITY OF

OAKLAND, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 734.

No. 06–1620. MARTIN ET VIR *v.* SANDERSON FARMS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 360.

No. 06–1621. LANGFORD *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–1622. KHANCHALIAN ET AL. *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 210 Fed. Appx. 40.

No. 06–1623. MID-ATLANTIC MARKET DEVELOPMENT CO., LLC, ET AL. *v.* MORAN FOODS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 476 F. 3d 436.

No. 06–1624. JENKINS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 483 F. 3d 90.

No. 06–1625. NATIONAL WRESTLING COACHES ASSN. ET AL. *v.* DEPARTMENT OF EDUCATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 465 F. 3d 20.

No. 06–1626. MITCHELL ET AL. *v.* CONTINENTAL AIRLINES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 3d 225.

No. 06–1627. BAIRD *v.* BNSF RAILWAY CO. C. A. 8th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 475.

No. 06–1628. ARNAL *v.* FRASER. Sup. Ct. S. C. Certiorari denied. Reported below: 371 S. C. 512, 641 S. E. 2d 419.

No. 06–1629. SANDERS *v.* WASHINGTON STATE COMMISSION ON JUDICIAL CONDUCT. Sup. Ct. Wash. Certiorari denied. Reported below: 159 Wash. 2d 517, 145 P. 3d 1208.

No. 06–1630. SCHARRINGHAUSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 611.

No. 06–1631. LAURENT *v.* HERKERT, UNITED STATES TRUSTEE. C. A. 11th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 724.

No. 06–1633. FAITH CENTER CHURCH EVANGELISTIC MINISTRIES ET AL. *v.* GLOVER, MEMBER AND CHAIR OF THE CONTRA COSTA COUNTY BOARD OF SUPERVISORS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 480 F. 3d 891.

No. 06–1635. PAONE ET UX. *v.* HERITAGE PLANTATION OWNERS' ASSN., INC. Ct. App. S. C. Certiorari denied.

No. 06–1636. DAVIDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 769.

No. 06–1638. LLOYD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 469 F. 3d 319.

No. 06–1639. BOONE ET AL. *v.* SPARADO, AS LIMITED GUARDIAN FOR TOWNSEND. C. A. 11th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 831.

No. 06–1640. BEUMEL *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 859 N. E. 2d 393.

No. 06–1641. ESPINOSA ET UX. *v.* UNION COUNTY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 212 Fed. Appx. 146.

No. 06–1643. PAUGH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–1644. DELONG *v.* BEST BUY CO., INC. C. A. 11th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 856.

No. 06–1645. CRAVENS ET AL. *v.* CITY OF LA MARQUE, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 433.

No. 06–1647. REIDT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–1648. NDS GROUP PLC ET AL. *v.* SOGECABLE, SA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–1649. MORRISSEY ET AL. *v.* LESNIAK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 622.

No. 06–1650. BRUNO *v.* LANTZ, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION, ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–1651. BEVAN *v.* LEE COUNTY SHERIFF'S OFFICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 824.

No. 06–1653. CLEMMONS *v.* ARMONTROUT, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 477 F. 3d 962.

No. 06–1654. KANOFSKY ET AL. *v.* STARK AND STARK. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–1655. TUNG *v.* CHIU. Ct. App. N. Y. Certiorari denied. Reported below: 7 N. Y. 3d 861, 857 N. E. 2d 1132.

No. 06–1656. BOONE *v.* JACKSON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 206 Fed. Appx. 30.

No. 06–1657. MAYER *v.* MONROE COUNTY COMMUNITY SCHOOL CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 3d 477.

No. 06–1658. LAMBERT *v.* CRIST ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 952.

No. 06–1659. YOUNG *v.* UNITED STATES (two judgments). C. A. 7th Cir. Certiorari denied. Reported below: 480 F. 3d 514 (first judgment) and 489 F. 3d 313 (second judgment).

No. 06–1660. PEREZ, PERSONAL REPRESENTATIVE OF THE ESTATE OF PEREZ, DECEASED *v.* OAKLAND COUNTY, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 466 F. 3d 416.

No. 06–1661. MORLEY ET AL. *v.* ONTOS, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 478 F. 3d 427.

No. 06–1662. LEVANDUSKI *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 907 A. 2d 3.

No. 06–1663. PIETRANGELO *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 223 Fed. Appx. 20.

No. 06–1664. KLEIMAN *v.* KLEIMAN. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–1665. BREEDING *v.* MCBRIDE, WARDEN. Cir. Ct. Putnam County, W. Va. Certiorari denied.

No. 06–1668. GUEST *v.* MCCANN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 3d 926.

No. 06–1669. MARKWARDT ET AL. *v.* CANNON & DUNPHY, S. C. Ct. App. Wis. Certiorari denied. Reported below: 296 Wis. 2d 512, 724 N. W. 2d 669.

No. 06–1670. TRICONTINENTAL INDUSTRIES, LTD., ET AL. *v.* PRICEWATERHOUSECOOPERS, LLP. C. A. 7th Cir. Certiorari denied. Reported below: 475 F. 3d 824.

No. 06–1672. GROS VENTRE TRIBE ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 469 F. 3d 801.

No. 06–1673. GREEN *v.* SAN DIEGO UNIFIED SCHOOL DISTRICT, AKA SAN DIEGO CITY SCHOOLS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 677.

No. 06–1676. LOWERY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 951 So. 2d 835.

No. 06–1677. SELGAS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 3d 697.

No. 06–1678. UNDSETH *v.* UNDSETH ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–1679. MURPHY *v.* FEDERAL INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 206 Fed. Appx. 143.

No. 06–1681. HYNIX SEMICONDUCTOR, INC., ET AL. *v.* RAMBUS INC. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–1682. KITT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 904 A. 2d 348.

No. 06–1683. ROBINSON *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 607.

No. 06–1685. FERMAINT ET AL. *v.* FAIRLEY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 3d 826.

No. 06–1686. PALLISCO *v.* HURON TOWNSHIP, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 406.

No. 06–1687. JOHNSON *v.* MOREY. Sup. Jud. Ct. Me. Certiorari denied.

No. 06–1688. JENKINS *v.* METHODIST HOSPITALS OF DALLAS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 3d 255.

No. 06–1689. ACUNA, INDIVIDUALLY AND AS ADMINISTRATRIX AD PROSEQUENDUM OF THE ESTATE OF ACUNA, DECEASED *v.* TURKISH ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 189 N. J. 420, 915 A. 2d 1045.

No. 06–1690. SCHMITT *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 208 Fed. Appx. 890.

No. 06–1691. TRANSCLEAN CORP. ET AL. *v.* JIFFY LUBE INTERNATIONAL, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 474 F. 3d 1298.

No. 06–1694. BREWER *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 479 F. 3d 908.

No. 06–1695. BANNISTER *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 06–1696. MILSTEIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 481 F. 3d 132.

No. 06–1697. JAMESON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 215 S. W. 3d 9.

No. 06–1698. HAMILTON *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 805.

No. 06–1701. SOUTHWIRE CO. *v.* JANOWICK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 470 F. 3d 264.

No. 06–1702. RELIABLE CONSULTANTS, INC., DBA DREAMERS *v.* CITY OF KENNEDALE, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 3d 336.

No. 06–1703. SHOWLER ET AL. *v.* HARPER'S MAGAZINE FOUNDATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 755.

No. 06–1704. CARLISLE *v.* CARNIVAL CORP. Sup. Ct. Fla. Certiorari denied. Reported below: 953 So. 2d 461.

No. 06–1706. WORDLAW *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 06–1707. DAVIS *v.* KOHOUT, ACTING JUDGE, LIVINGSTON COUNTY COURT, NEW YORK, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 8 N. Y. 3d 903, 865 N. E. 2d 1241.

No. 06–1708. MALONE *v.* KAHLE. C. A. 8th Cir. Certiorari denied. Reported below: 477 F. 3d 544.

No. 06–1709. EICHENLAUB ET AL. *v.* TOWNSHIP OF INDIANA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 214 Fed. Appx. 218.

No. 06–1711. SWECKER *v.* JOHANNS, SECRETARY OF AGRICULTURE. C. A. 8th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 625.

No. 06–1712. MACY *v.* HOPKINS COUNTY BOARD OF EDUCATION. C. A. 6th Cir. Certiorari denied. Reported below: 484 F. 3d 357.

No. 06–1713. DEL CONSUELO CEVILLA *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 446 F. 3d 658.

No. 06–1714. BELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 4th 582, 151 P. 3d 292.

No. 06–1715. HUGHES *v.* UTAH DEPARTMENT OF HUMAN SERVICES. Sup. Ct. Utah. Certiorari denied. Reported below: 156 P. 3d 820.

No. 06–1718. LUEBOW *v.* WANTUCH. Ct. App. Wis. Certiorari denied. Reported below: 297 Wis. 2d 584, 724 N. W. 2d 703.

No. 06–1719. DIMERY *v.* ULSTER SAVINGS BANK. Ct. App. N. Y. Certiorari denied. Reported below: 7 N. Y. 3d 920, 860 N. E. 2d 987.

No. 06–1721. ROGERS ET AL. *v.* CORTES, SECRETARY OF COMMONWEALTH OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 468 F. 3d 188.

No. 06–1722. ITC LTD. *v.* PUNCHGINI, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 482 F. 3d 135.

No. 06–1723. DR. REDDY'S LABORATORIES, LTD. *v.* ELI LILLY & CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 471 F. 3d 1369.

No. 06–9402. SIFUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 477.

No. 06–9506. PALMER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 357.

No. 06–9548. SOTO-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 798.

No. 06–9740. GRAHAM *v.* OHIO. Ct. App. Ohio, Hancock County. Certiorari denied.

No. 06–9838. PANTOJA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 673.

No. 06–9895. HALLFORD *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 459 F. 3d 1193.

No. 06–9994. POWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 785.

No. 06–9996. RIVERA-REYES *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 06–10015. ALLEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 469 F. 3d 11.

No. 06–10030. ROBERTS *v.* UNITED STATES; and
No. 06–10836. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 842.

No. 06–10050. GILLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 285.

No. 06–10088. BARRAZA CAZARES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 465 F. 3d 327.

No. 06–10117. BRANSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 939.

No. 06–10156. McCormick *v.* Braverman et al. C. A. 6th Cir. Certiorari denied. Reported below: 451 F. 3d 382.

No. 06–10203. Inman *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 281 Ga. 67, 635 S. E. 2d 125.

No. 06–10239. Tiscorena Renteria *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 187 Fed. Appx. 704.

No. 06–10248. Hankerson *v.* Minnesota. Sup. Ct. Minn. Certiorari denied. Reported below: 723 N. W. 2d 232.

No. 06–10268. Darias *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 899.

No. 06–10280. Pryor *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 195 Fed. Appx. 65.

No. 06–10315. Jimenez *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 214 Fed. Appx. 179.

No. 06–10323. Adkins *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 720.

No. 06–10330. Hammer *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 06–10402. Strickland *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 177.

No. 06–10415. Neal *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 328.

No. 06–10430. Dung Vu *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 215 Fed. Appx. 9.

No. 06–10490. Dolly *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 4th 458, 150 P. 3d 693.

No. 06–10494. Patton *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 482.

No. 06–10495. Trennell *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 06–10538. CASTRO-PORTILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 715.

No. 06–10553. HUMPHREYS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 468 F. 3d 1051.

No. 06–10575. PERRY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 06–10591. PURSLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 474 F. 3d 757.

No. 06–10600. MCCARTY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 859.

No. 06–10611. ARCHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–10647. DUNBAR *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–10651. HOOD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 211 S. W. 3d 767.

No. 06–10677. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 479 F. 3d 485.

No. 06–10686. NIBERT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 227.

No. 06–10692. ASHCROFT *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 33 App. Div. 3d 429, 823 N. Y. S. 2d 23.

No. 06–10747. HOWARD *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 945 So. 2d 326.

No. 06–10754. FONSECA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 215 Fed. Appx. 1.

No. 06–10757. DAUGHERTY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 221 W. Va. 15, 650 S. E. 2d 114.

No. 06–10765. DURAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–10772. DELANEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 356.

No. 06–10775. NELSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 291.

No. 06–10813. ORTIZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 3d 976.

No. 06–10815. NICHOLS, AS GUARDIAN OF THE PROPERTY OF SMN, A MINOR CHILD *v.* MAYNARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 826.

No. 06–10819. JONES *v.* PALAKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–10826. DEES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 467 F. 3d 847.

No. 06–10835. TILLMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 235.

No. 06–10844. TEACHER *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 211 Fed. Appx. 958.

No. 06–10849. JACKSON *v.* GRIMES ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–10850. JEFFERIES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 950 So. 2d 1238.

No. 06–10851. KNOX *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 06–10852. LAPINE *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 477 Mich. 1003, 726 N. W. 2d 34.

No. 06–10859. FLORES *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–10860. NEAMO *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 193.

No. 06–10864. MILLER *v.* HOOKS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 898.

No. 06–10868. MCGLOHON *v.* CITY OF DALLAS, TEXAS. C. A. 4th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 236.

No. 06–10870. WHITE *v.* JEANES, CLERK, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–10876. AARNESS *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 150 P. 3d 1271.

No. 06–10881. BALLESTEROS *v.* SALAZAR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–10883. BARGMAN *v.* JOHNSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–10890. BUTTS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–10891. GRABER *v.* BOBBY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–10894. SILVA *v.* RENICO. C. A. 6th Cir. Certiorari denied.

No. 06–10899. MURESAN *v.* WASHINGTON DEPARTMENT OF HEALTH AND SOCIAL SERVICES. Ct. App. Wash. Certiorari denied.

No. 06–10901. HURT *v.* DISTRICT OF COLUMBIA BOARD OF PAROLE. C. A. D. C. Cir. Certiorari denied. Reported below: 204 Fed. Appx. 903.

No. 06–10902. FEURTADO *v.* GILLESPIE ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–10904. IVY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 31 App. Div. 3d 1225, 817 N. Y. S. 2d 574.

No. 06–10905. FOREMAN *v.* FRANKLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 745.

No. 06–10912. JENNINGS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–10914. NEWBOLD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 289.

No. 06–10916. MILLS *v.* KIMBALL. Sup. Ct. N. H. Certiorari denied.

No. 06–10917. SCHNELLER *v.* FOX SUBACUTE AT CLARA BURKE ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 907 A. 2d 1147.

No. 06–10923. TRUSTY *v.* JONES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 325.

No. 06–10924. ALEXANDER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–10925. LEGRONE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–10927. SANCHEZ *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–10929. BEAUCHMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 587.

No. 06–10933. FELICIANO *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–10934. HALL *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–10936. HUTCHINS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 06–10937. GILL *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 06–10938. GORDON *v.* WHITE, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–10944. DELAPORTILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 489.

No. 06–10945. CARREON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 367 Ill. App. 3d 1088, 929 N. E. 2d 167.

No. 06–10950. QUADA *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–10959. PLUME *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–10960. RALEY *v.* AYRES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 3d 792.

No. 06–10961. RODGERS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 948 So. 2d 655.

No. 06–10962. STEPHENSON *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 674.

No. 06–10966. WALKER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 281 Ga. 157, 635 S. E. 2d 740.

No. 06–10969. NELSON *v.* HILL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 211 Fed. Appx. 88.

No. 06–10974. KILGALLEN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 367 Ill. App. 3d 1092, 929 N. E. 2d 168.

No. 06–10997. MONTGOMERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 224.

No. 06–11000. JONES *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–11003. SAMPLE *v.* MILES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 14.

No. 06–11007. DIAZ-RODRIGUEZ *v.* UNITED STATES (Reported below: 216 Fed. Appx. 453); ARRELLANOS-BARRIENTOS *v.* UNITED STATES (484 F. 3d 337); and TELLEZ-MORALES *v.* UNITED STATES (224 Fed. Appx. 452). C. A. 5th Cir. Certiorari denied.

No. 06–11008. DUNCAN *v.* FAPSO. C. A. 7th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 588.

No. 06–11012. SEYMORE *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 06–11013. ST. LOUIS *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–11019. MCGEE *v.* TEXAS (two judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 06–11021. WILSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11026. BREWER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 466 F. 3d 344.

No. 06–11028. AYER *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 154 N. H. 500, 917 A. 2d 214.

No. 06–11031. BROWN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11038. BOYLEN *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 06–11039. ADAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 809.

No. 06–11040. BROWN *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 67 Mass. App. 1116, 857 N. E. 2d 507.

No. 06–11043. WALKER *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 06–11050. RONE *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11052. JAYNES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 365 Ill. App. 3d 1100, 927 N. E. 2d 333.

No. 06–11059. PHILLIPPE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 954 So. 2d 28.

No. 06–11062. CARAWAY *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 06–11063. RITCHIE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 06–11064. EVANS *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 396 Md. 256, 914 A. 2d 25.

No. 06–11069. LONGO *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 341 Ore. 580, 148 P. 3d 892.

No. 06–11071. BISSELL *v.* BISSELL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 06–11073. SWAIN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 937 So. 2d 1160.

No. 06–11076. WHITE *v.* KRAMER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11084. DEERE *v.* WILLIAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11086. KEITH *v.* KELCHNER ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–11087. CANNON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11090. PERRO *v.* TERRELL, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–11091. BARTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 355.

No. 06–11093. AYALA *v.* LOS ANGELES CITY COLLEGE. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–11094. BARTHEL *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–11096. FRIERSON-HARRIS *v.* KALL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 529.

No. 06–11098. GOODEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–11100. BEN C. *v.* SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 4th 529, 150 P. 3d 738.

No. 06–11104. BISONG *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 328.

No. 06–11108. POLKE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 361 N. C. 65, 638 S. E. 2d 189.

No. 06–11110. LICEA-CEDILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 321.

No. 06–11111. JOHNSON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 112 Ohio St. 3d 210, 858 N. E. 2d 1144.

No. 06–11122. KING *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–11123. SUTHERLAND *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 223 Ill. 2d 187, 860 N. E. 2d 178.

No. 06–11126. STONE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 601.

No. 06–11128. MOSBY *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 3d 515.

No. 06–11132. LUBOWA *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 06–11133. SIELCK *v.* SIELCK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 919.

No. 06–11136. WARREN *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11137. MIDDLEBROOK *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–11138. PETTIES *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 06–11140. PARKS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11145. PILCHER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–11147. BOYLES *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 276.

No. 06–11150. BANDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 Fed. Appx. 680.

No. 06–11152. BOOTH *v.* ENDICOTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–11153. ALEXANDER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11155. BAYRAMOGLU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–11159. SEMLER *v.* MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS. Ct. App. Minn. Certiorari denied.

No. 06–11160. STEPHENSON *v.* MANIS. Ct. App. Wash. Certiorari denied. Reported below: 130 Wash. App. 1032.

No. 06–11161. RANGEL *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11163. SCROFANI *v.* CHRONES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 727.

No. 06–11168. R. C. *v.* ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES. Sup. Ct. Ark. Certiorari denied. Reported below: 368 Ark. 660, 249 S. W. 3d 797.

No. 06–11170. JACKSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 146 P. 3d 1149.

No. 06–11172. GONZALEZ-DE ANDA *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–11173. VILLEGAS *v.* WALKER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–11177. STEVENS *v.* WASHINGTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 323.

No. 06–11178. SHEPPARD *v.* SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES. Sup. Ct. S. C. Certiorari denied.

No. 06–11179. SMITH *v.* RATELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–11183. ALEXANDER *v.* PARKER, SUPERINTENDENT, PUTNAMVILLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 06–11184. BRIDGES *v.* CASON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 491.

No. 06–11185. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 950 So. 2d 1250.

No. 06–11186. BOWLING *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–11192. HOLTS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11193. FOREMAN *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–11197. COLEMAN *v.* VASQUEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–11198. CURRY *v.* ADVOCATE BETHANY HOSPITAL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 553.

No. 06–11200. ODOGWU *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 194.

No. 06–11202. JOHNSTON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11207. MAJOR *v.* PAINTER ET AL. Sup. Ct. La. Certiorari denied. Reported below: 949 So. 2d 422.

No. 06–11208. NELSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 396.

No. 06–11209. POWELL *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11210. HARRELL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 06–11213. KIDWELL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 06–11219. ROGERS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–11221. THEUS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied.

No. 06–11222. VELA *v.* CAMPBELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 612.

No. 06–11223. ANDRUS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11229. BARRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 1.

No. 06–11230. SILVER *v.* AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. C. A. 3d Cir. Certiorari denied. Reported below: 212 Fed. Appx. 82.

No. 06–11232. KINNALLY *v.* MARRIOTT INTERNATIONAL, INC. C. A. 4th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 145.

No. 06–11233. MULLIS *v.* COBB COUNTY BOARD OF COMMISSIONERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 364.

No. 06–11237. XIAN CHUN DONG *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 216 Fed. Appx. 209.

No. 06–11240. DHUE *v.* KASLE STEEL CORP. Ct. App. Mich. Certiorari denied.

No. 06–11243. TLATELPA-CALIXTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 423.

No. 06–11250. L. H. *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 06–11251. FLOYD *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 281 Ga. App. 72, 635 S. E. 2d 366.

No. 06–11252. KRUEGER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11254. DOWDY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 216 Fed. Appx. 178.

No. 06–11260. WILLIAMS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 461 F. 3d 999.

No. 06–11262. CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 403.

No. 06–11264. MCGEE *v.* MMDD SACRAMENTO PROJECT. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–11265. MCGEE *v.* CALIFORNIA STATE SENATE ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–11266. MILLER *v.* REDMAN, ACTING WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 322.

No. 06–11267. RODRIGUEZ *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 06–11271. JUAREZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 273.

No. 06–11273. JOHNSON *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11276. INSKEEP *v.* TIMMERMAN-COOPER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11278. MEDLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 476 F. 3d 835.

No. 06–11279. MONSCHKE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 133 Wash. App. 313, 135 P. 3d 966.

No. 06–11280. JOHNSON *v.* BRADSHAW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 426.

No. 06–11283. TARANTO *v.* WHITTIER COLLEGE ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 06–11284. JOHNSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 06–11285. OSBORNE *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 466 F. 3d 1298.

No. 06–11294. POON *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11296. PIN *v.* ROBINSON, WARDEN. C. A. 4th Cir. Certiorari denied.

No. 06–11298. BROOKS *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 636.

No. 06–11299. BOWLES *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11300. JOHNSON *v.* PALAKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–11304. PRIDGEON *v.* MORTON, WARDEN. Super. Ct. Charlton County, Ga. Certiorari denied.

No. 06–11305. PURSLEY *v.* ESTEP, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 733.

No. 06–11306. MORGAN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11308. REDD *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 248.

No. 06–11309. SEIFULLAH, AKA POWELL *v.* UPSHAW ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–11311. ROSS *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 723.

No. 06–11317. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 367 Ill. App. 3d 1091, 929 N. E. 2d 168.

No. 06–11318. MARSHALL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 210 S. W. 3d 618.

No. 06–11322. THOMAS *v.* JONES, ASSISTANT WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–11323. WATERS *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11328. BOWLEG *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 949 So. 2d 1058.

No. 06–11330. LAWSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11331. WILLIAMS *v.* CANNON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–11332. MCCAULEY *v.* JEFFREYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11333. MILLER *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 946 So. 2d 23.

No. 06–11336. TEETH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 686.

No. 06–11337. SPEARS *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Sup. Ct. Mich. Certiorari denied.

No. 06–11338. MOODY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 3d 260.

No. 06–11339. MELTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 949 So. 2d 994.

No. 06–11340. JACKSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 952 So. 2d 1190.

No. 06–11341. MASTERS *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 06–11343. SIMMONS *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 06–11346. POWERS *v.* DINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 06–11347. CARNEY *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11350. SKURDAL *v.* THOMAS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11351. ROSSI *v.* NEW YORK. Sup. Ct. N. Y., Kings County. Certiorari denied. Reported below: 12 Misc. 3d 1194, 824 N. Y. S. 2d 769.

No. 06–11352. STEWART *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 366 Ill. App. 3d 101, 851 N. E. 2d 672.

No. 06–11353. RATTLER *v.* DEPARTMENT OF LABOR ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–11357. CASCELLA *v.* CANAVERAL PORT DISTRICT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 839.

No. 06–11358. DUNBAR *v.* HAWAII. Int. Ct. App. Haw. Certiorari denied. Reported below: 111 Haw. 510, 143 P. 3d 49.

No. 06–11359. DIXON *v.* BRADSHAW, SHERIFF, PALM BEACH COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 941.

No. 06–11360. COMBS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 06–11362. BAKARICH *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–11363. BOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 260.

No. 06–11365. MOORE *v.* PURKETT, SUPERINTENDENT, EASTERN RECEPTION, DIAGNOSTIC AND CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–11367. CROW *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11368. ELLIOTT *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 06–11374. COBOS *v.* DENNISON, CHAIRMAN, NEW YORK STATE DIVISION OF PAROLE, ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 34 App. Div. 3d 1325, 825 N. Y. S. 2d 332.

No. 06–11375. STARLING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 238.

No. 06–11376. RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 345.

No. 06–11379. LEWIS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–11380. LANDRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 288.

No. 06–11381. LOWE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 112 Ohio St. 3d 507, 861 N. E. 2d 512.

No. 06–11383. SNEED *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–11385. STRONG *v.* DRAGOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CHESTER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–11386. NAVA-ANAYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 647.

No. 06–11390. BOWLING *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 06–11391. BELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 885.

No. 06–11394. CROUCH *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 06–11396. CINTRON *v.* DiGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–11397. DAWES *v.* JETER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 609.

No. 06–11399. CARNEY *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11400. PREUSS *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 06–11401. MOHAN, AKA SOSA *v.* McDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–11402. MONROY *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 06–11403. STOLLER *v.* TEPPER. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 06–11404. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 503.

No. 06–11406. STEPHENS *v.* GUILFOYLE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 732.

No. 06–11411. PATTERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–11412. MCNAMARA *v.* APPELLATE DIVISION, SUPREME COURT OF NEW YORK, SECOND JUDICIAL DEPARTMENT. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 06–11414. HUU THANH NGUYEN *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 477 F. 3d 716.

No. 06–11416. MILES *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11417. MATAELE *v.* FINN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 749.

No. 06–11418. JOHNSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 372.

No. 06–11419. KOEHLER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–11421. PIPER *v.* CRAIN, CHAIRMAN, TEXAS BOARD OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 235.

No. 06–11424. NUNEZ *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 06–11425. SALDANA *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 944 So. 2d 993.

No. 06–11432. BAILEY *v.* CARROLL, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 06–11438. DIGIANNI *v.* NATIONAL EVALUATION SYSTEMS, INC. C. A. 2d Cir. Certiorari denied.

No. 06–11442. WILLIS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–11446. WILLIAMS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 367 Ill. App. 3d 1117, 929 N. E. 2d 179.

No. 06–11449. PORTER *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 06–11450. WATERS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11451. MEADOR *v.* WADE, JUDGE, SUPERIOR COURT OF CALIFORNIA, SAN BERNARDINO COUNTY. C. A. 9th Cir. Certiorari denied.

No. 06–11452. WARREN *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 213 Fed. Appx. 986.

No. 06–11453. YOUNG *v.* MOORE, SUPERINTENDENT, NORTHEAST CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–11457. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 401.

No. 06–11461. HAND *v.* CARGILL FERTILIZER, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 925.

No. 06–11462. FAINES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 216 Fed. Appx. 227.

No. 06–11464. GUAJARDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11465. HOPSON *v.* KANSAS. Ct. App. Kan. Certiorari denied.

No. 06–11466. FEENEY *v.* CORRECTIONAL MEDICAL SERVICES, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 464 F. 3d 158.

No. 06–11467. HICKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–11468. HAYWARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 351.

No. 06–11469. GOMEZ *v.* HILL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 87 Fed. Appx. 374.

No. 06–11470. MCFADDEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 405.

No. 06–11472. CASTELLANOS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–11474. SHORT *v.* SIRMONS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 472 F. 3d 1177.

No. 06–11475. WRIGHT *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–11476. SOSA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–11478. AKERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 476 F. 3d 602.

No. 06–11479. TERRY, AKA BENSON *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11480. LAIR *v.* DEPARTMENT OF THE TREASURY ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–11481. BROWN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 948 So. 2d 405.

No. 06–11484. BLEDSOE *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–11485. BLAYLOCK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11486. GRIER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 475 F. 3d 556.

No. 06–11487. GASKIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 511.

No. 06–11490. CAMPBELL *v.* HOME DEPOT U. S. A., INC. C. A. 2d Cir. Certiorari denied. Reported below: 221 Fed. Appx. 21.

No. 06–11491. EL BEY *v.* DAVIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 203.

No. 06–11493. DAVIS *v.* DAVIS. Sup. Ct. Tenn. Certiorari denied.

No. 06–11494. BAKER *v.* OHIO DEPARTMENT OF JOB AND FAMILY SERVICES. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 06–11495. BREWER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 06–11499. VALLE *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 282 Ga. App. 223, 638 S. E. 2d 394.

No. 06–11501. WILLIAMS *v.* WOOD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 670.

No. 06–11502. MATTHEWS *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–11503. KAMARA *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 136.

No. 06–11507. RIDENOUR *v.* WILKINSON ET AL.; and
No. 06–11677. RAVER ET AL. *v.* WILKINSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–11510. MASSINGILL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11512. TORRES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 540.

No. 06–11513. LOCKE *v.* RICCI, ASSOCIATE ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–11514. JOHNSON *v.* KERNAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11516. SMITH *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–11522. BOYD *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE. C. A. 3d Cir. Certiorari denied.

No. 06–11523. DOXIE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–11524. JARA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 449.

No. 06–11526. JACKSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 368 Ark. 610, 249 S. W. 3d 127.

No. 06–11527. CHANG PING LIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 176.

No. 06–11530. JOHNSON *v.* YATES, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 614.

No. 06–11531. STOPHER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 06–11537. KEEL *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–11538. JACOBS *v.* LOONEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 790.

No. 06–11540. RUIZ-TERRAZAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 477 F. 3d 1196.

No. 06–11541. CHARLES *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 710.

No. 06–11542. BELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–11544. MAYE *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–11546. ESTRADA *v.* DALLAS COUNTY, TEXAS, ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 06–11551. XIANGYUAN ZHU *v.* ST. FRANCIS HEALTH CENTER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 717.

No. 06–11555. WHITE *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 323.

No. 06–11556. LOVE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 06–11560. REALYVASQUEZ-CABRAL, AKA VASQUEZ-CABRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 363.

No. 06–11561. RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 642.

No. 06–11562. JOHNSON *v.* SUBURBAN MOBILITY AUTHORITY REGIONAL TRANSPORTATION ET AL. Ct. App. Mich. Certiorari denied.

No. 06–11564. ESTRELLA-ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 579.

No. 06–11566. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 317.

No. 06–11567. WAKEFIELD *v.* SOUTHERN HOMES OF BROWARD. Sup. Ct. Fla. Certiorari denied. Reported below: 952 So. 2d 1193.

No. 06–11568. ASHANTI *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 06–11570. BROWN *v.* RHODES. Sup. Ct. Ohio. Certiorari denied. Reported below: 112 Ohio St. 3d 153, 858 N. E. 2d 412.

No. 06–11571. BOOKER *v.* RICKS, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–11573. CARDONA *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 191 Fed. Appx. 327.

No. 06–11574. ARANSEVIA *v.* MCKELVY, WARDEN. C. A. 11th Cir. Certiorari denied.

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No. 06–11575. BROWN *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 713.

No. 06–11576. AWHS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 06–11577. BARKSDALE *v.* RAY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 304.

No. 06–11578. BARCLAY *v.* DOE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 207 Fed. Appx. 102.

No. 06–11579. ANDREOLA *v.* WISCONSIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 495.

No. 06–11580. BARTHEL *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–11581. SPENCER *v.* BRUCE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 392.

No. 06–11582. SCHATZEL *v.* FLORIDA BOARD OF BAR EXAMINERS. Sup. Ct. Fla. Certiorari denied.

No. 06–11583. REYNOLDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–11584. RICHARD *v.* MENDOZA-POWERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11585. ESTES *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 1123, 146 P. 3d 1114.

No. 06–11586. EDWARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 327.

No. 06–11587. WATSON *v.* COMMUNITY MENTAL HEALTH CENTER. Ct. App. Ga. Certiorari denied.

No. 06–11588. WEARE *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 155 P. 3d 527.

No. 06–11589. WILLIAMS *v.* CIRCUIT COURT OF ARKANSAS, MILLER COUNTY, ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–11590. SMITH *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 350.

No. 06–11591. MCCARTHY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 620.

No. 06–11592. O'NEAL *v.* BARTOW, DIRECTOR, WISCONSIN RESOURCE CENTER. C. A. 7th Cir. Certiorari denied.

No. 06–11593. PITTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 315.

No. 06–11594. ORIACH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 312.

No. 06–11595. MOORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 481 F. 3d 1113.

No. 06–11596. NGHIEM *v.* FUJITSU MICROELECTRONICS, INC., AKA FUJITSU MICROELECTRONICS AMERICA, INC., ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 06–11598. LAWSON *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 226 Fed. Appx. 84.

No. 06–11600. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 317.

No. 06–11601. STEPHENS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 733.

No. 06–11602. SHAHWAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 629.

No. 06–11603. STARCHER *v.* EBERLIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11605. AVENDANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 211 Fed. Appx. 76.

No. 06–11606. BALLEW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–11608. TRUJILLO *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 169 P. 3d 235.

No. 06–11609. OLAGOKE *v.* CELLULOSE. C. A. 11th Cir. Certiorari denied.

No. 06–11610. MURPHY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 422.

No. 06–11611. MICELI *v.* BOARD OF REVIEW, NEW JERSEY DEPARTMENT OF LABOR. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–11613. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 371.

No. 06–11615. GONZALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 744.

No. 06–11616. FERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 513.

No. 06–11617. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 262.

No. 06–11618. GUILFORD *v.* VERIZON DIRECTORIES SALES-WEST, INC., FKA VERIZON DIRECTORIES SALES CORP. C. A. 11th Cir. Certiorari denied.

No. 06–11619. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 433.

No. 06–11621. GARRETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–11624. HERSHIPS *v.* SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 06–11625. GOULD *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 151 P. 3d 261.

No. 06–11626. GUTIERREZ *v.* HOWERTON, WARDEN. Super. Ct. Richmond County, Ga. Certiorari denied.

No. 06–11627. HOLCOMB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 756.

No. 06–11628. HOOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 358.

No. 06–11629. DOE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 801.

No. 06–11630. ESEKHIGBE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11631. SMITH *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 06–11632. SIMMONS *v.* SMALL BUSINESS ADMINISTRATION ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 475 F. 3d 1372.

No. 06–11633. SCOTT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 218 Fed. Appx. 108.

No. 06–11634. ROOKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 404.

No. 06–11635. OBERHOLTZER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 542.

No. 06–11636. OUTLAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 804.

No. 06–11637. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 480 F. 3d 1025.

No. 06–11638. TEAGLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 267.

No. 06–11639. TYLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 411.

No. 06–11640. WASHINGTON *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 06–11641. WOOD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 486 F. 3d 781.

No. 06–11642. LARRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–11643. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 488.

No. 06–11645. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 477 F. 3d 1110.

No. 06–11646. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–11647. MORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11648. THANH NGUYEN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 06–11649. MCGLAMRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 232.

No. 06–11650. BOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 578.

No. 06–11651. ALDARONDO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 478 F. 3d 52.

No. 06–11652. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 917.

No. 06–11653. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–11654. ANDERSON *v.* AUGUSTA STATE MEDICAL PRISON ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–11655. BERNARD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 209 Fed. Appx. 24.

No. 06–11656. BARTH *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 952 So. 2d 1194.

No. 06–11657. COOKSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11658. CAGE-BARILE *v.* BARILE. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–11659. TORRES *v.* LEE, ADMINISTRATOR, CALEDONIA CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 269.

No. 06–11661. HERNANDEZ-GOMEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 889.

No. 06–11662. HOLLINS *v.* METHODIST HEALTHCARE, INC., DBA METHODIST UNIVERSITY HOSPITAL. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 3d 223.

No. 06–11663. HINES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–11664. GIBSON, AKA WILLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 215.

No. 06–11666. HAQUE *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 06–11667. HARGROVE *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 211 S. W. 3d 379.

No. 06–11668. HAMMONDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 184 Fed. Appx. 324.

No. 06–11669. FRANCIS *v.* COOPER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–11670. PALMER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 06–11671. POZO *v.* SCHNEITER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–11673. RENKEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 3d 984.

No. 06–11674. SMITH *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11675. ESTRELLO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11676. CAPOZZI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 486 F. 3d 711.

No. 06–11678. SCHREIBER *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 06–11679. HENDRICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 890.

No. 06–11680. GATEWOOD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–11681. HASTINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 231.

No. 06–11682. HALL, AKA FROST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11683. GORDON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 421.

No. 06–11684. HUIZAR *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11685. GONZALEZ-RIVERA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 217 Fed. Appx. 166.

No. 06–11686. HARRISON *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 06–11687. SANDOVAL-CERRANTES, AKA SANDOVAL, AKA MURGUIA, AKA JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 584.

No. 06–11688. RISPER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–11689. MORENO SALAS *v.* CANO ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–11690. SIMMONS *v.* EDMONDSON, JUSTICE, SUPREME COURT OF OKLAHOMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 787.

No. 06–11691. COLEMAN, AKA JOHNSON, AKA LEWIS, AKA HAFIZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 139.

No. 06–11692. THOMPSON *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 431.

No. 06–11693. DILLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 3d 747.

No. 06–11694. EPPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 Fed. Appx. 391.

No. 06–11695. SMELOSKY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 363.

No. 06–11697. JENKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 678.

No. 06–11698. BROUSSARD *v.* THOMPSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–11699. ADKINS *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–11700. BOWIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–11701. BROOKS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 406.

No. 06–11702. BERMUDEZ *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11704. OLMOS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 06–11705. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 937.

No. 06–11706. MORALES *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. Ct. App. Ore. Certiorari denied.

No. 06–11708. CHALMERS *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11709. GHEE *v.* TARGET NATIONAL BANK, FKA RETAILERS NATIONAL BANK-TARGET VISA. Ct. App. Ga. Certiorari denied. Reported below: 282 Ga. App. 28, 637 S. E. 2d 742.

No. 06–11710. FISHER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 142.

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No. 06–11712. GRIFFIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 953 So. 2d 519.

No. 06–11713. FREEMAN *v.* WATKINS ET AL. Ct. App. Colo. Certiorari denied.

No. 06–11714. HINTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 3d 904.

No. 06–11715. GOODMAN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–11716. INGRAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 304.

No. 06–11717. GRACE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11719. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 182.

No. 06–11720. STRINGER *v.* LOWE. Ct. App. Miss. Certiorari denied. Reported below: 955 So. 2d 381.

No. 06–11722. DOMINGUEZ-CASTRO *v.* UNITED STATES (Reported below: 220 Fed. Appx. 367); SALAZAR-PERALTA *v.* UNITED STATES (220 Fed. Appx. 364); SANCHEZ-PEREZ *v.* UNITED STATES (220 Fed. Appx. 355); and TALAMANTES-BARRAZA *v.* UNITED STATES (222 Fed. Appx. 383). C. A. 5th Cir. Certiorari denied.

No. 06–11724. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11727. EVANS *v.* TERMINIX INTERNATIONAL CO. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–11729. SCHNELLER *v.* TAYLOR HOSPITAL ET AL.; and SCHNELLER *v.* MAIN LINE HOSPITALS, INC., ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 909 A. 2d 898 (both judgments).

No. 06–11730. BLANCO-SALINAS, AKA SALINAS BLANCO *v.* UNITED STATES (Reported below: 220 Fed. Appx. 357); DEL VILLAR-GARCIA, AKA DELVILLAR *v.* UNITED STATES (220 Fed.

Appx. 359); HUERTA-GANDARA *v.* UNITED STATES (220 Fed. Appx. 355); VASQUEZ-AGUILAR *v.* UNITED STATES (220 Fed. Appx. 363); and SOTO-SEGURA, AKA GONZALEZ *v.* UNITED STATES (220 Fed. Appx. 363). C. A. 5th Cir. Certiorari denied.

No. 06–11732. ZAVALA-MENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 324.

No. 06–11733. CAMPBELL *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11734. SMITH *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–11736. DOCKERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 106.

No. 06–11737. EDWARDS *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–11738. CONCEPCION *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–11739. PERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 557.

No. 06–11740. ZMIJEWSKI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–11741. ROSS *v.* VEACH, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 508.

No. 06–11742. SLOAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 238.

No. 06–11743. THOMAS *v.* MONTGOMERY COUNTY BOARD OF EDUCATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 562.

No. 06–11744. KOCH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–11745. LYNCH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–11746. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–11747. JOHNSON *v.* WELLS FARGO BANK. C. A. 3d Cir. Certiorari denied. Reported below: 196 Fed. Appx. 112.

No. 06–11748. BRITTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 219.

No. 06–11749. ACOSTA-CENICEROS, AKA AGUILAR-ACOSTA *v.* UNITED STATES (Reported below: 220 Fed. Appx. 348); ALONZO-SIERRA, AKA MARTINEZ, AKA ALONZO, AKA SIERRA *v.* UNITED STATES (221 Fed. Appx. 342); BARAJAS-ROMERO, AKA GOMEZ *v.* UNITED STATES (221 Fed. Appx. 351); BARBOZA-GARCIA *v.* UNITED STATES (221 Fed. Appx. 341); CARMONA-SAMBRANO *v.* UNITED STATES (221 Fed. Appx. 342); CHAVEZ-DELGADO *v.* UNITED STATES (221 Fed. Appx. 362); DIAZ-PERALTA, AKA PERALTA-DIAZ *v.* UNITED STATES (220 Fed. Appx. 367); DOMINGUEZ-CARO, AKA CARO *v.* UNITED STATES (220 Fed. Appx. 360); ENCIZO-MENDEZ *v.* UNITED STATES (220 Fed. Appx. 358); ESQUIVEL-RUIZ *v.* UNITED STATES (222 Fed. Appx. 383); JUAREZ-VARILLAS *v.* UNITED STATES (222 Fed. Appx. 382); LOPEZ-MACIAS *v.* UNITED STATES (222 Fed. Appx. 369); LOPEZ-PEREZ *v.* UNITED STATES (220 Fed. Appx. 352); MARRUFO-YANEZ, AKA DOMINGUEZ-CORTEZ *v.* UNITED STATES (221 Fed. Appx. 371); MARTINEZ-SANDOVAL *v.* UNITED STATES (222 Fed. Appx. 384); MEZA-MANCHAME *v.* UNITED STATES (220 Fed. Appx. 362); PIEDRA-FUERTE *v.* UNITED STATES (221 Fed. Appx. 368); ROBERTS-ESTRELLA *v.* UNITED STATES (220 Fed. Appx. 362); RODRIGUEZ-MORALES, AKA RODRIGUEZ *v.* UNITED STATES (221 Fed. Appx. 367); RODRIGUEZ-OLIVAS *v.* UNITED STATES (220 Fed. Appx. 353); RODRIGUEZ-ROJO *v.* UNITED STATES (220 Fed. Appx. 359); SOPERANEZ-ROSAS *v.* UNITED STATES (222 Fed. Appx. 369); and VARGAS-GARZON, AKA PEREZ *v.* UNITED STATES (222 Fed. Appx. 381). C. A. 5th Cir. Certiorari denied.

No. 06–11750. BOWERSOX *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–11751. BRADFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 391.

No. 06–11753. THOMAS *v.* MONTGOMERY COUNTY BOARD OF EDUCATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 623.

No. 06–11754. FORTUNE *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 191 Fed. Appx. 171.

No. 06–11755. HINNANT *v.* BRITTON-JACKSON, WARDEN, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–11756. FAIRCLOTH *v.* LEE, SUPERINTENDENT, CALEDONIA CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 232.

No. 06–11757. HORTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 371.

No. 06–11758. CARROLL *v.* WALKER, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 895.

No. 06–11759. DAVIS *v.* DENNISON. C. A. 2d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 68.

No. 06–11761. HILLSMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 3d 333.

No. 06–11762. FEAZELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 430.

No. 06–11763. CAMPBELL *v.* WALKER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–11765. FINN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 631.

No. 06–11766. FRANCIS *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 729 N. W. 2d 584.

No. 06–11767. HERZOG *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 06–11768. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11769. HENDERSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 06–11770. FIELDS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

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No. 06–11771. GAVIN *v.* PREFERRED HYDE PARK PROPERTIES. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1223, 931 N. E. 2d 368.

No. 06–11772. GEORGE, AKA DALEY *v.* WAINSTEIN ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 197 Fed. Appx. 2.

No. 06–11773. FAST HORSE *v.* ROUNDS, GOVERNOR OF SOUTH DAKOTA, ET AL. C. A. 8th Cir. Certiorari denied.

No. 06–11774. GRIGGS *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 213 S. W. 3d 923.

No. 06–11776. GREENE *v.* FONTENOT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 343.

No. 06–11777. O'NEILL, AKA LOGAN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 123 Nev. 9, 153 P. 3d 38.

No. 06–11778. NAKAGAWA *v.* SHELTON. Sup. Ct. Colo. Certiorari denied.

No. 06–11779. MORALES *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 06–11780. MOON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–11781. KEMFORT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 583.

No. 06–11782. LEWELLYN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 481 F. 3d 695.

No. 06–11783. KIMBROUGH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 477 F. 3d 144.

No. 06–11784. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 359.

No. 06–11785. HALL *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 06–11786. PERRY *v.* COMPTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11787. MELENDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 06–11788. AGUILAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 964.

No. 06–11789. AREVALO-SANCHEZ, aka CUEVAS-KARR *v.* UNITED STATES (Reported below: 223 Fed. Appx. 390); MORALES-RODRIGUEZ *v.* UNITED STATES (223 Fed. Appx. 434); DUQUE-HERNANDEZ *v.* UNITED STATES (227 Fed. Appx. 326); FRAGOSA-ALANIZ *v.* UNITED STATES (224 Fed. Appx. 378); MURRILLO-PENA *v.* UNITED STATES (224 Fed. Appx. 376); GUERRERO *v.* UNITED STATES (224 Fed. Appx. 385); FAVELA-MASUCA *v.* UNITED STATES (247 Fed. Appx. 464); ORO-HERNANDEZ *v.* UNITED STATES (225 Fed. Appx. 229); GOMEZ-GUERRA *v.* UNITED STATES (485 F. 3d 301); HERNANDEZ-LOPEZ *v.* UNITED STATES (225 Fed. Appx. 307); MANUEL GONZALEZ *v.* UNITED STATES (227 Fed. Appx. 390); MARTINEZ-MORENO *v.* UNITED STATES (227 Fed. Appx. 406); RAMIREZ-ALVAREZ *v.* UNITED STATES (227 Fed. Appx. 418); MONDRAGON-JIMENEZ, aka JIMINEZ MONDRAGON, aka JIMENEZ MONDRAGON, aka MONDRAGON *v.* UNITED STATES (228 Fed. Appx. 487); MARTINEZ-ZAMORANO *v.* UNITED STATES (228 Fed. Appx. 497); PINEDA-DOMINGUEZ *v.* UNITED STATES; Barrera-Castro *v.* UNITED STATES (232 Fed. Appx. 429); REES *v.* UNITED STATES (233 Fed. Appx. 362); and LANDEROS-REYES *v.* UNITED STATES (229 Fed. Appx. 302). C. A. 5th Cir. Certiorari denied.

No. 06–11790. PENA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–11791. RODRIGUEZ-REQUENO *v.* UNITED STATES (Reported below: 224 Fed. Appx. 388); VILLEDA-ESCOBAR *v.* UNITED STATES (224 Fed. Appx. 377); ESCOBAR-LOPEZ, aka LOPEZ *v.* UNITED STATES (224 Fed. Appx. 387); VALDEZ *v.* UNITED STATES (224 Fed. Appx. 378); HINOJOSA-POSADA *v.* UNITED STATES (224 Fed. Appx. 379); PUENTE-LIMON *v.* UNITED STATES (224 Fed. Appx. 454); PRADO-VASQUEZ *v.* UNITED STATES (225 Fed. Appx. 272); VILLANUEVA-CONTRERAS *v.* UNITED STATES; PACO-GUMERCINDO *v.* UNITED STATES (226 Fed. Appx. 418); OZARIO-QUIROZ, aka LOPEZ-PENA *v.* UNITED STATES (226 Fed. Appx. 424); PUENTE-SOLIS *v.* UNITED STATES (226 Fed. Appx. 419); PASCUAL-RODRIGUEZ *v.* UNITED STATES (226 Fed. Appx.

442); MENDEZ-SANCHEZ *v.* UNITED STATES (226 Fed. Appx. 427); HERNANDEZ-HERNANDEZ *v.* UNITED STATES (227 Fed. Appx. 382); HERNANDEZ *v.* UNITED STATES; and HERNANDEZ-HERNANDEZ *v.* UNITED STATES (227 Fed. Appx. 417). C. A. 5th Cir. Certiorari denied.

No. 06–11793. HILL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 915 A. 2d 964.

No. 06–11795. LOGAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 533.

No. 06–11796. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 147.

No. 06–11797. KISER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 579.

No. 06–11798. KUKAFKA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 478 F. 3d 531.

No. 06–11800. MERCADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 220 Fed. Appx. 111.

No. 06–11801. MILTON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–11803. CLARK *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 831 So. 2d 1282.

No. 06–11805. STANLEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 369 Ill. App. 3d 441, 860 N. E. 2d 343.

No. 06–11806. RAMOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 216 Fed. Appx. 140.

No. 06–11807. RAMIREZ, AKA MEZA-RAMIREZ, AKA CLAVO-BARRAZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 3d 1026.

No. 06–11808. RICHARDSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 480 F. 3d 542.

No. 06–11809. REGA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 208 Fed. Appx. 27.

No. 06–11810. ROGERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 149.

No. 06–11813. LABRAKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 921.

No. 06–11814. LOPEZ *v.* JONES. C. A. 7th Cir. Certiorari denied.

No. 06–11815. CHESBROUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11816. ALIM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–11817. BERGERON *v.* KING MOHAMED V ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 717.

No. 06–11818. CARTER *v.* BLAKE. C. A. 8th Cir. Certiorari denied.

No. 06–11819. DEFRANCISCO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 06–11820. DEAVER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11821. CAO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 902.

No. 06–11822. MCPHERSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–11823. PARKHURST *v.* PITTSBURGH PAINTS INC. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 747.

No. 06–11824. LOPEZ NUNEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–11825. JONES *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 848 N. E. 2d 373.

No. 06–11826. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

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No. 06–11827. WATSON *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 240 Fed. Appx. 410.

No. 06–11828. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–11829. VALDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 948.

No. 06–11831. BAILEY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11832. BUTLER *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 939.

No. 06–11833. BATES *v.* HERNANDEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11834. NIKONOVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 3d 371.

No. 06–11835. PURVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 691.

No. 06–11836. MEADS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 479 F. 3d 598.

No. 06–11837. MUYINGO *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 695.

No. 06–11838. JONES *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 281 Conn. 613, 916 A. 2d 17.

No. 06–11839. LATU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 479 F. 3d 1153.

No. 06–11840. BANKS *v.* NATIONAL PERSONNEL RECORDS CENTER. C. A. Fed. Cir. Certiorari denied. Reported below: 213 Fed. Appx. 991.

No. 06–11841. BYRD *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–11842. BAILEY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11843. YATES *v.* IOWA. Dist. Ct. Woodbury County, Iowa. Certiorari denied.

No. 06–11845. MONTGOMERY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–11846. COUSINS *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–11847. STURDIVANT *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 06–11848. ROGERS *v.* SANDERS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 441.

No. 06–11849. STEWART *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 947 So. 2d 449.

No. 06–11850. RODRIGUEZ-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 581.

No. 06–11851. GAYTAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 519.

No. 06–11852. HOPPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–11853. GARZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 924.

No. 06–11855. GROVES *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 06–11856. GIVENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 910.

No. 06–11857. HILL *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 367 Ill. App. 3d 1102, 929 N. E. 2d 173.

No. 06–11858. HARPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 955.

No. 06–11859. GILMORE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 06–11860. QUINTANA-GARCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–11861. QADAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 223 Fed. Appx. 22.

No. 06–11862. GRIFFITH *v.* WIRDELL. C. A. 11th Cir. Certiorari denied.

No. 06–11864. PRATT *v.* NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS ET AL. C. A. 1st Cir. Certiorari denied.

No. 06–11865. ASCENCIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 661.

No. 06–11866. BURLEW *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 06–11869. SEWELL *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 06–11870. EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 287.

No. 06–11871. LONG *v.* KENTUCKY ET AL. Ct. App. Ky. Certiorari denied.

No. 06–11872. JACKSON *v.* HILL ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–11874. LEE *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 930 So. 2d 174.

No. 06–11875. JENNINGS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 220 Fed. Appx. 66.

No. 06–11876. LOPEZ *v.* MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 480 F. 3d 591.

No. 06–11877. DAVILA LECHUGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 317.

No. 06–11878. MARTIN *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 06–11879. POWERS *v.* MCBRIDE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 224.

No. 06–11880. PRIME *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 466.

No. 06–11881. DANIEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11882. ANZIANI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–11883. BYRD *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 210.

No. 06–11885. CONWAY *v.* TEXAS BOARD OF PARDONS AND PAROLES ET AL. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 06–11886. CARTER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–11887. UBIERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 486 F. 3d 71.

No. 06–11888. BENITEZ TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11889. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 211.

No. 06–11890. URENA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 218 Fed. Appx. 14.

No. 06–11891. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 953.

No. 06–11892. QUATTLEBAUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 192 Fed. Appx. 245.

No. 06–11893. ROBINSON *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 771.

No. 06–11894. JOHNSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 06–11895. DILWORTH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–11896. PARDEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 650.

No. 06–11897. AJJAHNON *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 238 Fed. Appx. 769.

No. 06–11898. ALBRA *v.* CITY OF FORT LAUDERDALE, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 885.

No. 06–11899. BOLDEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 479 F. 3d 455.

No. 06–11900. BAILEY *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–11901. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 480 F. 3d 1277.

No. 06–11902. SON VAN LY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 685.

No. 06–11904. WHEELOCK *v.* RHODE ISLAND DEPARTMENT OF CORRECTIONS ET AL. C. A. 1st Cir. Certiorari denied.

No. 06–11905. MOCTEZUMA SALINAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 740.

No. 06–11906. LEWIS *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied.

No. 06–11907. TORRES-LARANEGA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 476 F. 3d 1148.

No. 06–11908. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 325.

No. 06–11909. IVEY *v.* PAULSON, SECRETARY OF THE TREASURY. C. A. 11th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 815.

No. 06–11910. COOPER *v.* FRANCOIS. Ct. App. D. C. Certiorari denied.

No. 06–11911. WEAVER *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 455 F. 3d 958.

No. 06–11912. MORALES *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 476 F. 3d 545.

No. 06–11913. MILLER *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 06–11914. LOCKE *v.* CATTELL, WARDEN, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 476 F. 3d 46.

No. 06–11915. ZEBROWSKI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–11916. KIDD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 12.

No. 06–11918. WALKER *v.* SALAZAR, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–11919. MARTINEZ-VILLA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 751.

No. 06–11920. LEAKES *v.* HERBERT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–11921. KUNSELMAN *v.* MATOUSEK ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 953 So. 2d 541.

No. 06–11922. MCCANTS *v.* VEAL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11923. DOTSON *v.* RANEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11924. DENHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–11925. WILLIAMS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 4th 287, 148 P. 3d 47.

No. 06–11926. DURAN *v.* WALKER, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 865.

No. 06–11927. DANIELS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 06–11928. STOERING *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–11929. GARZA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–11930. REDD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 594.

No. 06–11931. REHBERGER *v.* CRAIG, CHIEF JUDGE, SUPERIOR COURT OF GEORGIA, FLINT JUDICIAL CIRCUIT. C. A. 11th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 932.

No. 06–11932. REDD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 06–11933. NOWACK *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–11934. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 290.

No. 06–11935. BELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 06–11936. BUCKNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–11937. BELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 06–11938. ALI *v.* STICKMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 206 Fed. Appx. 184.

No. 06–11939. HUBBARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 224.

No. 06–11940. GOPP *v.* OHIO. Ct. App. Ohio, Wayne County. Certiorari denied.

No. 06–11941. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 803.

No. 06–11942. GENAO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 224 Fed. Appx. 39.

No. 06–11943. GALLARDO *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 609.

No. 06–11944. KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 305.

No. 06–11945. LEGATE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–11946. JONES *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 812.

No. 06–11947. GARZA LOPEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 06–11948. VASQUEZ *v.* MALFI, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 598.

No. 06–11949. MCDERMOTT *v.* KEISLER, ACTING ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 215 Fed. Appx. 1.

No. 06–11950. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 320.

No. 06–11951. MONTGOMERY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 226 Fed. Appx. 87.

No. 06–11952. CAMPBELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 526.

No. 06–11953. HANSBROUGH *v.* BROWN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11954. FRANKLIN *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 06–11955. SCHIRO *v.* FARWELL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 591.

No. 06–11956. SOMMER *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 272 Neb. 995, 726 N. W. 2d 542.

No. 06–11957. BURKETT *v.* CHAMPAGNE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–11958. BYNUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 260.

No. 06–11959. ALVARADO-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 719.

No. 06–11960. CASTELLON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 494.

No. 06–11961. CUTCHIN *v.* PEARSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 377.

No. 06–11962. CHAPMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 827.

No. 06–11963. EASLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 579.

No. 06–11964. EDWARDS *v.* LINDAMOOD, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 06–11965. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 223.

No. 06–11966. WYNTER *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–11967. WILLIAMS *v.* BENTON, WARDEN. Super. Ct. Macon County, Ga. Certiorari denied.

No. 06–11968. DRAY *v.* COURT OF COMMON PLEAS OF OHIO, ALLEN COUNTY, ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–11969. WOODS ET UX. *v.* UNITED STATES POSTAL SERVICE. C. A. 6th Cir. Certiorari denied.

No. 06–11970. CALLIES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 238.

No. 06–11971. VAN VELZER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–11974. DUNCAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 479 F. 3d 924.

No. 06–11976. MCCORMICK *v.* FINDLING ET AL. C. A. 6th Cir. Certiorari denied.

No. 06–11977. MUNOZ-RECILLAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 621.

No. 06–11978. PETERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–11980. WELLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 255.

No. 06–11981. LEETH ET UX. *v.* JIM WALTER HOMES, INC., ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–11982. MANRIQUEZ *v.* AYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 501.

No. 06–11983. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 218 Fed. Appx. 158.

No. 06–11984. DEWOLF *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 06–11985. VAZQUEZ-SENERIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–11986. BOLTON *v.* ROBERTS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 761.

No. 06–11987. BOYD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 314.

No. 06–11989. GRIMES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 552.

No. 06–11990. HILL *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 142 Cal. App. 4th 770, 47 Cal. Rptr. 3d 875.

No. 06–11991. HINOJOSA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 625.

No. 06–11992. HINNANT *v.* BRITTON-JACKSON ET AL. C. A. D. C. Cir. Certiorari denied.

No. 06–11993. WANZER *v.* PENA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 368.

No. 06–11994. ALLEYNE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 34 App. Div. 3d 367, 828 N. Y. S. 2d 2.

No. 06–11996. CHAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 3d 829.

No. 06–11997. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 476 F. 3d 1176.

No. 06–11998. GARLAND-SASH *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–11999. IVERSON *v.* CITY OF PHILADELPHIA, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 213 Fed. Appx. 115.

No. 06–12000. FLAGG, AKA WILLS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 481 F. 3d 946.

No. 06–12001. FOWLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 738.

No. 06–12002. RODRIGUEZ-NICOLAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 669.

No. 06–12003. ROLDAN-SAMUDIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 904.

No. 06–12005. STEPHENS *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 109.

No. 06–12006. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 612.

No. 06–12007. DAVIS-RICE *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 222 Fed. Appx. 135.

No. 06–12008. CARDINE *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–12009. DIAZ *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 11th Cir. Certiorari denied.

No. 06–12012. LEONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 671.

No. 06–12013. WRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 417.

No. 06–12014. LAZO-ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 739.

No. 06–12016. JACKSON *v.* LIBRARY OF CONGRESS. C. A. D. C. Cir. Certiorari denied.

No. 06–12017. BRIGHT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 593.

No. 06–12018. SHORTER *v.* METROPOLITAN LIFE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 689.

No. 06–12020. FAULK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–12021. RICHARDSON *v.* UNITED STATES POSTAL SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 326.

No. 06–12022. BRIDGES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 06–12023. BROOKS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 220 Fed. Appx. 77.

No. 06–12024. ANDREWS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 479 F. 3d 894.

No. 06–12025. BOWERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 402.

No. 06–12026. BURNS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–12027. BEAUVAIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–12028. NGUYEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–12029. QUINONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–12032. MEDINA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 219 Fed. Appx. 20.

No. 06–12033. MICHAELESCO *v.* KATZ ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 223 Fed. Appx. 11.

No. 06–12035. WASHINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–12036. VARGAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 477 F. 3d 94.

No. 06–12038. TRUJILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 374.

No. 06–12039. LYERLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 225.

No. 06–12040. JAMISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–12041. LAVOLL *v.* GRIGAS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 592.

No. 06–12043. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 240.

No. 06–12044. LOVE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 113 Ohio St. 3d 1441, 863 N. E. 2d 657.

No. 06–12045. LITTLE *v.* NEW YORK. App. Term, Sup. Ct. N. Y., 2d & 11th Jud. Dists. Certiorari denied. Reported below: 14 Misc. 3d 70, 830 N. Y. S. 2d 428.

No. 06–12047. MADRIGAL-OCHOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 429.

No. 06–12048. SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 F. 3d 683.

No. 06–12049. RITCHIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 656.

No. 06–12050. RUIZ-SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 749.

No. 06–12051. ROBLES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 836.

No. 06–12052. JULIEN *v.* ABBOTT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 804.

No. 06–12053. SANCHEZ *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 707.

No. 06–12054. SEARLES *v.* WEST HARTFORD BOARD OF EDUCATION ET AL.; SEARLES *v.* RELIC ET AL.; and SEARLES *v.* WEST HARTFORD BOARD OF EDUCATION ET AL. C. A. 2d Cir. Certiorari denied.

No. 06–12055. BOONE *v.* TOMPKINS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 06–12056. ABRAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 240.

No. 06–12057. MOORE *v.* CITY OF DETROIT, MICHIGAN, ET AL. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 06–12058. BROOKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–12059. BARTELL *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 177.

No. 06–12060. BANNISTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 903.

No. 06–12061. BATES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 644.

No. 06–12062. CUNNINGHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 258.

No. 06–12063. CRUMP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 268.

No. 06–12064. COOK *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 06–12065. CASSELL *v.* CHRISTIAN SCIENCE BOARD OF DIRECTORS. App. Ct. Mass. Certiorari denied. Reported below: 67 Mass. App. 1119, 858 N. E. 2d 316.

No. 06–12067. DOUGLAS *v.* INGERSOLL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 06–12068. CARPENTER *v.* PENNSYLVANIA STATE UNIVERSITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 206 Fed. Appx. 120.

No. 06–12069. CARDENAS CASTANEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–12070. MCCOY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 636.

No. 06–12071. WALKER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–12072. ZORRILLA *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 06–12073. STEMLEY *v.* GUSMAN, SHERIFF, ORLEANS PARISH PRISON, ET AL. C. A. 5th Cir. Certiorari denied.

No. 06–12074. WHITE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 408 F. 3d 399.

No. 06–12075. JESSIAH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–12076. MANN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 937 So. 2d 722.

No. 06–12077. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 422.

No. 06–12078. PERSAUD *v.* DOE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 740.

No. 06–12079. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 340.

No. 06–12080. KENT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 227 Fed. Appx. 176.

No. 06–12081. STENNER *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 281 Conn. 742, 917 A. 2d 28.

No. 06–12083. MOFFETT *v.* ENDICOTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 06–12084. TORRES-BONES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–12086. ABBOTT *v.* READ. C. A. 9th Cir. Certiorari denied.

No. 06–12087. MILES *v.* MARYLAND. Cir. Ct. Queen Anne's County, Md. Certiorari denied.

No. 06–12088. HURST *v.* TRADER, JUDGE, COURT OF COMMON PLEAS OF DELAWARE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 223 Fed. Appx. 128.

No. 06–12089. FREEMAN, AKA BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 3d 829.

No. 06–12090. GARCIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 3d 994.

No. 06–12091. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 287.

No. 06–12092. ROSS *v.* JARRIEL, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 860.

No. 06–12094. ROBINSON *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 06–12095. HARRIS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 255 Ill. 2d 1, 866 N. E. 2d 162.

No. 06–12096. HARVEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 291.

No. 06–12097. FLORES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–12098. GALLAGHER *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 944 So. 2d 360.

No. 06–12100. FALLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 06–12101. HOEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 357.

No. 06–12102. HARVEY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–12103. FAVORS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 06–12104. FLORES *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 06–12107. GEIGER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 06–12108. GRAHAM *v.* MORRISON, ATTORNEY GENERAL OF KANSAS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 790.

No. 06–12109. HOBEREK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–12110. HERMOSILLO, *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 06–12113. COOPER *v.* VASBINDER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–12114. DOGGETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–12115. SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 06–12116. CHILDS *v.* ORTIZ ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 804.

No. 06–12117. DIFILIPPO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 453.

No. 06–12118. CLARK *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 06–12119. AGUDELO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 235 Fed. Appx. 21.

No. 06–12120. DAVENPORT *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 215 Fed. Appx. 175.

No. 06–12121. CLARKE *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 156 Wash. 2d 880, 134 P. 3d 188.

No. 06–12122. COLMINES *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–12123. CANNON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 475 F. 3d 1013.

No. 06–12124. CRABB *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 722.

No. 06–12125. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 06–12127. TAYLOR *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 387.

No. 06–12128. TILFORD *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 931 So. 2d 563.

No. 06–12129. BROWN *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 06–12131. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 383.

No. 07–1. LONG *v.* DAWSON SPRINGS INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 427.

No. 07–3. RWEYEMAMU *v.* CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES ET AL. App. Ct. Conn. Certiorari denied. Reported below: 98 Conn. App. 646, 911 A. 2d 319.

No. 07–4. GOLAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–5. HEFFINGTON, INDIVIDUALLY AND ON BEHALF OF HER MINOR SON, G. M. *v.* DISTRICT COURT OF SEDGWICK COUNTY, WICHITA, KANSAS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 800.

No. 07–6. GIOVANELLI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 3d 346.

No. 07–11. SMITH *v.* FRIEDMAN ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 168 Md. App. 767, 777.

No. 07–13. TAYLOR *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 64 M. J. 416.

No. 07–16. NEW YORK *v.* HAVRISH. Ct. App. N. Y. Certiorari denied. Reported below: 8 N. Y. 3d 389, 866 N. E. 2d 1009.

No. 07–17. KUZNETSOV *v.* NATIONAL CITY BANK OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 07–20. BARR LABORATORIES, INC. *v.* SAMANTA. C. A. 9th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 775.

No. 07–23. CLANTON *v.* ST. LAWRENCE HOSPITAL ET AL.; and CLANTON *v.* INGHAM CIRCUIT JUDGE. Ct. App. Mich. Certiorari denied.

No. 07–26. CITRIN *v.* BOREY ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 945 So. 2d 1289.

No. 07–27. DMITRUK, ADMINISTRATOR OF THE ESTATE OF BUGAYCHUK, DECEASED, ET AL. *v.* GEORGE & SONS' REPAIR SHOP, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 765.

No. 07–28. VINTILLA *v.* SAFECO INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 413.

No. 07–29. J&G SALES, LTD. *v.* SULLIVAN, ACTING DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES. C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 3d 1043.

No. 07–32. DEMERIE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–34. DESIGNING HEALTH, INC. *v.* ERASMUS ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 226 Fed. Appx. 976.

No. 07–35. APOTEX, INC., ET AL. *v.* SYNTEX (U. S. A.) LLC ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 221 Fed. Appx. 1002.

No. 07–39. AKL *v.* VIRGINIA HOSPITAL CENTER ET AL. Sup. Ct. Va. Certiorari denied.

No. 07–41. SUNDY *v.* CITY OF CHAMBLEE, GEORGIA, ET AL. Ct. App. Ga. Certiorari denied.

No. 07–42. STOYANOV *v.* DEPARTMENT OF THE NAVY (Reported below: 474 F. 3d 1377); and STOYANOV *v.* MERIT SYSTEMS PROTECTION BOARD (218 Fed. Appx. 988). C. A. Fed. Cir. Certiorari denied.

No. 07–43. UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL *v.* JENNINGS. C. A. 4th Cir. Certiorari denied. Reported below: 482 F. 3d 686.

No. 07–45. SALEM, FKA NESHEWAT, ET UX. *v.* NESHEWAT. C. A. 2d Cir. Certiorari denied. Reported below: 194 Fed. Appx. 24.

No. 07–46. JENKINS *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 07–47. LIE *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 197 Fed. Appx. 175.

No. 07–50. BRAUNSTEIN *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–51. HENRY, AKA WALKER *v.* UNITED STATES; and
No. 07–5040. HARRISON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 472 F. 3d 910.

No. 07–52. METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE *v.* TUTTLE. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 3d 307.

No. 07–53. MCKENZIE-ADAMS *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 281 Conn. 486, 915 A. 2d 822.

No. 07–54. VERMA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 07–55. AREY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 270.

No. 07–57. CHRISTIAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 320.

No. 07–58. EICHHOLZ *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 07–59. BARROW *v.* GREENVILLE INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 3d 377.

No. 07–63. LI *v.* LOS ANGELES COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 619.

No. 07–64. PALISADES CHARTER HIGH SCHOOL ET AL. *v.* KNAPP. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 146 Cal. App. 4th 708, 53 Cal. Rptr. 3d 182.

No. 07–66. MONTES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–69. CATAWBA INDIAN TRIBE OF SOUTH CAROLINA *v.* SOUTH CAROLINA ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 372 S. C. 519, 642 S. E. 2d 751.

No. 07–70. WILLIAMSON ET AL. *v.* HAYNES BEST WESTERN OF ALEXANDRIA, INC., ET AL. Sup. Ct. La. Certiorari denied. Reported below: 940 So. 2d 648.

No. 07–71. MCCALLISTER *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 07–74. WINE & SPIRITS RETAILERS, INC., ET AL. *v.* RHODE ISLAND AND PROVIDENCE PLANTATIONS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 481 F. 3d 1.

No. 07–75. RFR INDUSTRIES, INC. *v.* REX-HIDE INDUSTRIES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 222 Fed. Appx. 973.

No. 07–78. REYNOLDS *v.* CITY OF NEW YORK, NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 214 Fed. Appx. 23.

No. 07–80. MILLER ET AL. *v.* SCOTT, SURVIVING HUSBAND OF SCOTT, DECEASED. C. A. 6th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 516.

No. 07–82. CAMPOLI *v.* HEALTHEXTRAS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 232 Fed. Appx. 20.

No. 07–84. BICKFORD *v.* ALASKA ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 155 P. 3d 302.

No. 07–85. KERSEY *v.* WILSON. Ct. App. Tenn. Certiorari denied.

No. 07–93. DOE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 221 Fed. Appx. 944.

No. 07–105. THOLEN ET AL. *v.* COUNTRYWIDE HOME LOANS. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 218 S. W. 3d 542.

No. 07–106. UNION PACIFIC RAILROAD CO. ET AL. *v.* BURROWS. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 218 S. W. 3d 527.

No. 07–108. GROSS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 37 App. Div. 3d 1062, 827 N. Y. S. 2d 903.

No. 07–115. ALL COMMUNITY WALK IN CLINIC ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 949.

No. 07–120. LAMBERT *v.* DEPARTMENT OF STATE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 552.

No. 07–121. MATLAW *v.* HUG ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 485 F. 3d 926.

No. 07–124. RICE ET UX. *v.* GRUBBS. Sup. Ct. Ga. Certiorari denied. Reported below: 281 Ga. 614, 641 S. E. 2d 514.

No. 07–133. SANCHEZ SALAS *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 632.

No. 07–136. BAIARDI FOOD CHAIN *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 482 F. 3d 238.

No. 07–139. WALLACE *v.* FEDERATED DEPARTMENT STORES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 214 Fed. Appx. 142.

No. 07–145. TITTLE *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 618.

No. 07–146. JONES ET AL. *v.* CITY OF MCMINNVILLE, OREGON. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 755.

No. 07–151. FONCECA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 336.

No. 07–156. MOLI ET AL. *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 07–158. DEUTSCH *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 478 F. 3d 450.

No. 07–161. RODRIGUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 484 F. 3d 1006.

No. 07–162. WHEELER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 259.

No. 07–163. PALIVOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 3d 250.

No. 07–167. BARASH ET UX. *v.* NORTHERN TRUST CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 205 Fed. Appx. 869.

No. 07–169. NEIDERT ET UX. *v.* GLEN ONOKO ESTATES. Super. Ct. Pa. Certiorari denied.

No. 07–171. FLORANCE *v.* TAYLOR. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 219 S. W. 3d 620.

No. 07–172. MADISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 535.

No. 07–179. BENJAMIN *v.* JOHANNS, SECRETARY OF AGRICULTURE. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 192.

No. 07–181. TURNER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–185. KORSINSKY *v.* DUDAS, DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 227 Fed. Appx. 891.

No. 07–188. ANDERSON ET VIR *v.* WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC., ET AL. Ct. App. Tenn. Certiorari denied.

No. 07–195. VARTANIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 476 F. 3d 1095 and 223 Fed. Appx. 662.

No. 07–196. ZEHRBACH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 316.

No. 07–200. BALCAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–201. STONEWELL CORP. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 467 F. 3d 1300.

No. 07–207. FEARON-HALES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 224 Fed. Appx. 109.

No. 07–213. ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 681.

No. 07–217. DIVINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–221. STAFF IT, INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 3d 792.

No. 07–224. REEDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–228. SASSOWER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 915 A. 2d 964.

No. 07–245. JWANOUSKOS *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 246 Fed. Appx. 677.

No. 07–253. CORRIGAN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 223 Fed. Appx. 968.

No. 07–255. TRANTHAM *v.* ISAACKS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 218 S. W. 3d 750.

No. 07–258. SELDON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 479 F. 3d 340.

No. 07–5001. MILLER *v.* UNITED STATES; and
No. 07–5069. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 446.

No. 07–5002. POTTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 218 Fed. Appx. 132.

No. 07–5003. PINKINS *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 535.

No. 07–5004. METTETAL, AKA MAUPIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 200.

No. 07–5005. NELSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 317.

No. 07–5010. SANDLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 469 F. 3d 508.

No. 07–5011. STEWART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 253.

No. 07–5012. SHEPPARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 208.

No. 07–5014. RODRIGUEZ-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 277.

No. 07–5015. BAYER *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–5017. COLEMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–5018. CLOPTON ET UX. *v.* AIRPORT MARINA HOTEL, INC., ET AL. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 07–5019. PERTGEN *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5020. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 270.

No. 07–5021. PETERSEN *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 07–5022. PEARSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 212.

No. 07–5023. PENDER *v.* UNION OF C. S. E. A. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 225 Fed. Appx. 17.

No. 07–5024. CONTINI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 596.

No. 07–5025. WRIGHT *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 313.

No. 07–5026. AGUILAR-ESCOBEDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 682.

No. 07–5027. CRUMPTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 914.

No. 07–5028. EICHINGER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 591 Pa. 1, 915 A. 2d 1122.

No. 07–5030. MARCH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–5032. COMER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–5033. SMITH *v.* BAZZLE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 321.

No. 07–5035. HISTON *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5037. FLYNN, AKA ABBOTT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 836.

No. 07–5038. GARCIA *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 07–5039. HERRON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 199 Fed. Appx. 472.

No. 07–5041. SHELTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 490 F. 3d 74.

No. 07–5042. HARALSON *v.* FLORIDA PAROLE COMMISSION ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5044. LOPEZ-MUNDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 665.

No. 07–5045. LONGORIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 408.

No. 07–5046. CERVANTES-CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 718.

No. 07–5047. NEALY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 329.

No. 07–5048. MONTGOMERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5049. GONZALEZ *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 68 Mass. App. 91, 860 N. E. 2d 37.

No. 07–5050. FORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 481 F. 3d 215.

No. 07–5052. APPLETON-LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 746.

No. 07–5053. THOMAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 914 A. 2d 1.

No. 07–5054. ABBOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 186.

No. 07–5055. SIMPSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–5056. RUEBEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5057. ROBINSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–5059. LYND *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 470 F. 3d 1308.

No. 07–5063. JACKSON *v.* SINGH ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–5064. KLEIN *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 651.

No. 07–5065. ENGLES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 481 F. 3d 1243.

No. 07–5066. THOMAS *v.* HULICK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–5067. KNIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 835.

No. 07–5068. McKee *v.* Mitchell, County Attorney, Oswego, New York. C. A. 9th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 744.

No. 07–5070. Pender *v.* Potter, Postmaster General, et al. C. A. 2d Cir. Certiorari denied.

No. 07–5071. Montano *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 472 F. 3d 1202.

No. 07–5072. Knickerbocker *v.* Wolfenbarger, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 426.

No. 07–5073. Langford *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 07–5074. Philson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 259.

No. 07–5076. Porter *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 123 Nev. 849, 210 P. 3d 760.

No. 07–5077. Olson *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 123 Nev. 846, 210 P. 3d 757.

No. 07–5078. Pauley *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 254.

No. 07–5079. Wanzer *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–5080. Moore *v.* Williams, Warden. C. A. 6th Cir. Certiorari denied.

No. 07–5081. Ponce *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 951 So. 2d 843.

No. 07–5082. Pratt *v.* Sirmons, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 742.

No. 07–5083. McLean *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 07–5084. Ockenfels *v.* Burt, Warden. C. A. 8th Cir. Certiorari denied.

No. 07–5085. COOLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 205 Fed. Appx. 17.

No. 07–5086. PALM *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1220, 931 N. E. 2d 367.

No. 07–5087. ORTIZ-WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 913.

No. 07–5089. JACOBS *v.* FRANK, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 397.

No. 07–5091. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1146, 859 N. E. 2d 290.

No. 07–5093. MORAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 213 S. W. 3d 917.

No. 07–5095. MAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 666.

No. 07–5096. LUONG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 471.

No. 07–5097. WHEELER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 317.

No. 07–5098. PARENGKUAN *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 07–5099. CHLUP *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 07–5100. CERVANTES-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 640.

No. 07–5101. DE LA SOTA-RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 897.

No. 07–5102. HOOVER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 179 N. C. App. 226, 633 S. E. 2d 890.

No. 07–5103. GEORGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 925.

No. 07–5104. TWITTY *v.* O'CONNOR ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–5105. HERNANDEZ *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–5106. GIBSON *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–5107. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 287.

No. 07–5108. HENRY *v.* PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW. Commw. Ct. Pa. Certiorari denied.

No. 07–5109. MCALLISTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–5110. OLIVEROS-ESTUPINAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5112. BRADY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–5113. THOMAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 921 A. 2d 798.

No. 07–5114. URDIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5115. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 335.

No. 07–5116. WELLS *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–5117. VASQUEZ-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 Fed. Appx. 875.

No. 07–5118. ALEXANDER *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 534.

No. 07–5120. BLACKBURN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–5121. BEASLEY *v.* MOSLEY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5122. BARNES *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 951 So. 2d 846.

No. 07–5123. WHITE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–5125. BRADLEY *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 07–5126. TIMMONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 206.

No. 07–5127. ELLIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 580.

No. 07–5128. VIA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 07–5129. NEWSOME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 475 F. 3d 1221.

No. 07–5132. GILLIAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 116.

No. 07–5133. MAMBO *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 07–5134. LYONS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 123 Nev. 835, 210 P. 3d 747.

No. 07–5135. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 470 F. 3d 1234.

No. 07–5136. SUDEEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 369.

No. 07–5137. BRYANT *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 372 S. C. 305, 642 S. E. 2d 582.

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No. 07–5138. IRWIN *v.* BLAKEY, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–5139. BARNES *v.* WEST VIRGINIA. Cir. Ct. Berkeley County, W. Va. Certiorari denied.

No. 07–5141. HEYWARD *v.* WOOD, CORRECTIONAL ADMINISTRATOR, SCOTLAND CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 119.

No. 07–5143. PENNY *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5144. MURRAY *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 164.

No. 07–5145. HAMILTON *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5147. HOLLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 957.

No. 07–5148. HINES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 472 F. 3d 1038.

No. 07–5150. SALLIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–5151. SHABAZZ *v.* TENNESSEE. Ct. App. Tenn. Certiorari denied.

No. 07–5152. RIDDLE-BEY *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Sup. Ct. Mich. Certiorari denied.

No. 07–5153. SPEARS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 225.

No. 07–5155. RANDOLPH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 298.

No. 07–5157. DYESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 478 F. 3d 224.

No. 07–5158. TURNER *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–5159. SCHOFIELD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 619.

No. 07–5160. STRICH *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 99 Conn. App. 611, 915 A. 2d 891.

No. 07–5161. GUERRA-PEREZ *v.* UNITED STATES (Reported below: 224 Fed. Appx. 396); HERNANDEZ-SANTA CRUZ *v.* UNITED STATES (224 Fed. Appx. 410); RODELA-MARTINEZ, AKA CHAVIRA-MARTINEZ *v.* UNITED STATES (224 Fed. Appx. 398); and LIMA-MORALES *v.* UNITED STATES (224 Fed. Appx. 398). C. A. 5th Cir. Certiorari denied.

No. 07–5162. MADRID-SOLANO *v.* UNITED STATES (Reported below: 224 Fed. Appx. 408); OLALDE-GARCIA *v.* UNITED STATES (224 Fed. Appx. 373); and VALENZUELA-GONZALEZ, AKA MORALEZ-TORRES *v.* UNITED STATES (224 Fed. Appx. 404). C. A. 5th Cir. Certiorari denied.

No. 07–5163. JIMENEZ-ZAMORA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 329.

No. 07–5164. LIKE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 123 Nev. 835, 210 P. 3d 747.

No. 07–5165. JOHNSON *v.* CELIS ET AL. Super. Ct. Wash., King County. Certiorari denied.

No. 07–5166. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 213.

No. 07–5167. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 236.

No. 07–5168. PALACIOS-YANES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 373.

No. 07–5169. NUNEZ-GONZALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 924.

No. 07–5170. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5171. CASTRO-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 408.

No. 07–5172. WHITE *v.* BEZY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 512.

No. 07–5173. MCNEIL *v.* WRIGHT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 303.

No. 07–5174. ANTHES *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 694.

No. 07–5175. ARRIETA-DEL REAL *v.* UNITED STATES (Reported below: 224 Fed. Appx. 405); BULNES-ZELAYA *v.* UNITED STATES (224 Fed. Appx. 403); CABRERA-VALENZUELA *v.* UNITED STATES (224 Fed. Appx. 372); CRUZ-ESCOBAR *v.* UNITED STATES (224 Fed. Appx. 372); DIAZ-MALDONADO, AKA GONZALEZ *v.* UNITED STATES (224 Fed. Appx. 404); GALVAN-CHAVIRA *v.* UNITED STATES (224 Fed. Appx. 409); HERNANDEZ-GARCIA, AKA CRUZ-VILLA *v.* UNITED STATES (224 Fed. Appx. 410); LUNA-GONZALES, AKA LUNA *v.* UNITED STATES (224 Fed. Appx. 402); OROSCO-AGINAGA *v.* UNITED STATES (224 Fed. Appx. 407); OZUNA-MARTINEZ *v.* UNITED STATES (224 Fed. Appx. 401); RIVAS-HERNANDEZ, AKA GARCIA, AKA RIVAS *v.* UNITED STATES (224 Fed. Appx. 400); and ZEPEDA-SOTO, AKA ZEPEDA *v.* UNITED STATES (224 Fed. Appx. 397). C. A. 5th Cir. Certiorari denied.

No. 07–5176. BASILIO ET VIR *v.* CAMRAY DEVELOPMENT & CONSTRUCTION CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 602.

No. 07–5178. SERRANO-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 382.

No. 07–5179. SHUGART *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 334.

No. 07–5180. VALLE-MONTALBO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 3d 1197.

No. 07–5181. VALLIAN, ON BEHALF OF K. V. *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 314.

No. 07–5182. THOMPSON *v.* ST. VINCENT INFIRMARY MEDICAL CENTER, DBA ST. VINCENT DOCTORS HOSPITAL, ET AL. Ct. App. Ark. Certiorari denied. Reported below: 98 Ark. App. 190, 253 S. W. 3d 26.

No. 07–5183. SMITH *v.* STEWART ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–5185. CHAPMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–5186. MOSS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 957 So. 2d 1176.

No. 07–5187. DAY-PETRANO ET VIR *v.* HUTTO, INDIVIDUALLY AND AS SUBSTITUTE CUSTODIAN OF THE M/V MISTRESS. C. A. 11th Cir. Certiorari denied.

No. 07–5188. MCCRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–5189. HENRY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 482 F. 3d 27.

No. 07–5190. C. P. *v.* LEON COUNTY SCHOOL BOARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 483 F. 3d 1151.

No. 07–5191. GONZALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 700.

No. 07–5192. LEE *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 07–5193. LOCKE *v.* BISSONETTE ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–5194. JABBOUR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5196. RUIZ-MALDONADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 535.

No. 07–5197. RODRIGUEZ-LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 784.

No. 07–5198. ROLLOW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 790.

No. 07–5199. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 199.

No. 07–5202. HINOJOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 3d 337.

No. 07–5203. CAMPBELL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 921 A. 2d 798.

No. 07–5204. CALABRIA *v.* UNITED STATES PAROLE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 336.

No. 07–5205. DANIELS *v.* KNIGHT, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 476 F. 3d 426.

No. 07–5206. PACHINGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5208. IHNATENKO ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 3d 1097.

No. 07–5210. TORRES *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 639.

No. 07–5212. TROIANO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–5213. GAVIRIA *v.* REYNOLDS ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 476 F. 3d 940.

No. 07–5215. BILLUPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 312.

No. 07–5216. GRANT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 235 Fed. Appx. 911.

No. 07–5217. KNOX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–5219. FAVORS *v.* GARRETT ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5220. CHECO *v.* JETER, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 07–5221. CRAM *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 689.

No. 07–5222. CABACCANG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 481 F. 3d 1176.

No. 07–5224. WEST *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 298 Wis. 2d 549, 727 N. W. 2d 374.

No. 07–5225. WILLIAMS *v.* BURNETT ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5226. NASH *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–5227. STACKHOUSE *v.* KRAVICH. C. A. 3d Cir. Certiorari denied. Reported below: 222 Fed. Appx. 142.

No. 07–5228. BATISTA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 483 F. 3d 193.

No. 07–5229. RICHARDSON *v.* ROBINSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 280.

No. 07–5230. MARSHALL *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 943 So. 2d 362.

No. 07–5231. KLUNK *v.* U. S. COST, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 254.

No. 07–5232. WALL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–5233. HARTLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 293.

No. 07–5234. ROYSTER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 219.

No. 07–5235. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5236. BELL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5237. BETANCOURT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 206.

No. 07–5238. BLAIR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–5239. FULLER *v.* ARMSTRONG ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 204 Fed. Appx. 987.

No. 07–5240. BENJAMIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 296.

No. 07–5241. BROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 260.

No. 07–5242. ANDERSON *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied.

No. 07–5243. BROWN *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 896.

No. 07–5245. LEWIS *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES. Ct. App. D. C. Certiorari denied. Reported below: 915 A. 2d 964.

No. 07–5246. LASKODI *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5247. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 175.

No. 07–5248. VALLE, AKA LANDAVERDE *v.* UNITED STATES (Reported below: 224 Fed. Appx. 440); RAMIREZ-CASTRO *v.* UNITED STATES (224 Fed. Appx. 425); and GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5249. ZAVALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 3d 745.

No. 07–5250. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 477 F. 3d 974.

No. 07–5251. ESPINOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 546.

No. 07–5252. COLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 07–5253. CRUM *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied.

No. 07–5254. CASSELL *v.* JAGUST ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 441.

No. 07–5255. FOUCHE *v.* DiGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–5256. PEARISON *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5257. HUNTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5258. BRAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 511.

No. 07–5261. WALLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 519.

No. 07–5262. WATSON *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5263. GOODRICH *v.* CLINTON COUNTY PRISON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 214 Fed. Appx. 105.

No. 07–5264. BELL *v.* DAVENPORT. C. A. D. C. Cir. Certiorari denied. Reported below: 226 Fed. Appx. 9.

No. 07–5265. HERRON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 795.

No. 07–5266. KNEITEL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 33 App. Div. 3d 816, 822 N. Y. S. 2d 602.

No. 07–5267. MACIAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 683.

No. 07–5269. KENNEDY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5270. PARRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 479 F. 3d 722.

No. 07–5273. DIARRA *v.* ALLEN COUNTY CHILD SUPPORT ENFORCEMENT ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5274. CARRIZALES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5276. VEANUS *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied.

No. 07–5277. BELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–5278. CANTRELL *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 236.

No. 07–5279. GARZA *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 07–5280. HARRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–5281. WELLS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 133 Wash. App. 1006.

No. 07–5282. THOMAS *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5283. KELLY *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–5284. QUINLAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 3d 273.

No. 07–5285. STANSBURY *v.* SHERMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5286. SEANEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 773.

No. 07–5287. STILLMAN *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5288. SMITH *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5289. RICHARDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5290. GHILARDUCCI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 480 F. 3d 542.

No. 07–5291. CARBAJAL-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5292. DEPINTO *v.* BARKER, CHIEF JUSTICE, SUPREME COURT OF TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5293. DELL *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5295. CHUDIO *v.* KESSLER CARE CENTER, INC., ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–5296. MONROE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5297. CRAIG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 863.

No. 07–5298. QUINN-HUNT *v.* BENNETT ENTERPRISES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 452.

No. 07–5299. WILLIAMS *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 424.

No. 07–5300. WOODWORTH *v.* NORWOOD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5301. TRAXLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 477 F. 3d 1243.

No. 07–5302. WILLIAMS *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 506.

No. 07–5303. VALENZUELA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 785.

No. 07–5304. PATTERSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 919 A. 2d 1173.

No. 07–5305. SLATON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 07–5306. PORTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 744.

No. 07–5308. LUNNEY *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 37 App. Div. 3d 1079, 829 N. Y. S. 2d 349.

No. 07–5309. MUECKE *v.* OLSON. C. A. 5th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 395.

No. 07–5310. PIKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 3d 1053.

No. 07–5311. MITCHELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 472.

No. 07–5312. MCDERMOTT *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 448 Mass. 750, 864 N. E. 2d 471.

No. 07–5313. GUZMAN RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 418.

No. 07–5314. SANJARI *v.* GRATZOL ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–5316. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 478 F. 3d 1332.

No. 07–5317. CRAFT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 484 F. 3d 922.

No. 07–5318. EDDLEMON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5319. PEREZ *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 681.

No. 07–5320. DOXY *v.* UNITED STATES; and
No. 07–5376. GARDNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 400.

No. 07–5321. BOTA-CORTES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–5322. CRANDELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 4th 1301, 156 P. 3d 364.

No. 07–5325. VAN BRYSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 485 F. 3d 1205.

No. 07–5326. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 248.

No. 07–5327. L. R. *v.* KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES ET AL. Ct. App. Ky. Certiorari denied.

No. 07–5328. BITZER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 958 So. 2d 1029.

No. 07–5329. ANDUAGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 357.

No. 07–5330. RODDY *v.* WEST VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 220.

No. 07–5331. SILVA, AKA SUNDOWN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–5332. MULLINS *v.* BRADT, ACTING SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 228 Fed. Appx. 55.

No. 07–5334. POURAHMAD *v.* MADDING, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5335. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 222 Fed. Appx. 113.

No. 07–5336. KING *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 07–5339. WOODSON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 959 So. 2d 274.

No. 07–5340. TAYLOR *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 07–5342. WOOD *v.* SPENCER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied. Reported below: 487 F. 3d 1.

No. 07–5343. YANCEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 267.

No. 07–5344. VELARDE *v.* REID, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 07–5345. MORRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 308.

No. 07–5348. CONLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 232.

No. 07–5349. DIXON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 264.

No. 07–5350. COX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 223.

No. 07–5352. BELL *v.* REVELL, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 474 F. 3d 558.

No. 07–5353. OPARAJI *v.* UNITED FEDERATION OF TEACHERS. C. A. 2d Cir. Certiorari denied.

No. 07–5355. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 440 F. 3d 1286.

No. 07–5356. MARSHALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 231.

No. 07–5357. METCALF *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–5359. BARAJAS-GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 737.

No. 07–5360. AMAYA-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 254.

No. 07–5361. PARRA-LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5364. MCCASTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–5365. WRIGHT *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5366. PEREZ *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 957 So. 2d 1173.

No. 07–5368. ARROYO-ORTIZ *v.* PEREIRA, SECRETARY, PUERTO RICO DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied.

No. 07–5369. BRANCH *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 229.

No. 07–5370. ALVARADO *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–5371. BROWN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–5372. BROWN *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 755.

No. 07–5373. BROYLES *v.* CASON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5374. BRYANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 253.

No. 07–5375. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 251.

No. 07–5377. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 476 F. 3d 791.

No. 07–5378. GUNN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 785.

No. 07–5380. FIEGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–5381. FARRELL *v.* MILYARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 766.

No. 07–5383. HARTMAN *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5384. MCKELVER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 185.

No. 07–5385. PHILLIPS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 347.

No. 07–5386. RODRIGUEZ-ZAPATA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 729.

No. 07–5387. SMITH *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 07–5388. SPENCER *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 07–5389. SALINAS-CASTILLO *v.* UNITED STATES (Reported below: 230 Fed. Appx. 372); HERNANDEZ-MARTINEZ *v.* UNITED STATES (230 Fed. Appx. 429); RAMIREZ-PATINO *v.* UNITED STATES (230 Fed. Appx. 436); and SALINAS-HERNANDEZ *v.* UNITED STATES (230 Fed. Appx. 443). C. A. 5th Cir. Certiorari denied.

No. 07–5390. SHILLING *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 955 So. 2d 1274.

No. 07–5391. JONES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5392. PLAISANCE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–5394. BELL *v.* KITCHINGS, DEPARTMENT OF EMPLOYMENT SERVICES. C. A. D. C. Cir. Certiorari denied. Reported below: 226 Fed. Appx. 8.

No. 07–5395. MALONE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–5396. PIERRE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 484 F. 3d 75.

No. 07–5397. ECHOLS *v.* BARROW, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–5398. COOPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5399. CORMIER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–5400. EDWARDS *v.* HARDY, CORRECTIONAL ADMINISTRATOR, NASH CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 299.

No. 07–5401. ORDAZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 227 Fed. Appx. 170.

No. 07–5405. LARA *v.* SMITH. C. A. 3d Cir. Certiorari denied. Reported below: 206 Fed. Appx. 138.

No. 07–5406. BUILTRON MALACARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 439.

No. 07–5407. BAILEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 807.

No. 07–5408. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 227 Fed. Appx. 130.

No. 07–5409. BANG *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5411. MORRISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 933.

No. 07–5413. MURRAY ET UX. *v.* TOWN OF MANSURA, LOUISIANA, ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 940 So. 2d 832.

No. 07–5414. JORDAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 180.

No. 07–5415. SHRYOCK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–5416. SULLIVAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5417. STEWART *v.* UCHTMAN ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–5418. RICHARDSON *v.* CROSS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 305.

No. 07–5419. CORT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5420. HONESTO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–5422. HALLMAN *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 07–5423. IRIZARRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–5424. WHITE HORSE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 610.

No. 07–5426. RIDGEWAY *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 951 So. 2d 1012.

No. 07–5428. MCLEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 224.

No. 07–5430. LANG *v.* KENTUCKY ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5431. DOWDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 228.

No. 07–5432. GILKERS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–5433. GONZALEZ-GALLEGOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 673.

No. 07–5435. GRICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–5436. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 204.

No. 07–5437. BUTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–5438. BELL *v.* NORDSTROM ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 226 Fed. Appx. 9.

No. 07–5440. CROCKTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 227.

No. 07–5441. DEAN *v.* WRENN, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS. Super. Ct. N. H., Coos County. Certiorari denied.

No. 07–5442. CLUCK *v.* LEHMAN ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–5443. CLUCK *v.* PORTER, SUPERINTENDENT, WASHINGTON CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 07–5444. LINDSEY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 372 S. C. 185, 642 S. E. 2d 557.

No. 07–5445. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5446. ACKERMAN *v.* FORTIS, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5447. WILSON *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 938 So. 2d 1111.

No. 07–5450. BAKER *v.* OAKLAND UNIFIED SCHOOL DISTRICT. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–5451. COTTEN *v.* DAVIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 464.

No. 07–5452. CLEMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 888.

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No. 07–5454. REED, AKA REED-BEY *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5455. RAMSEY *v.* RUNNELS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 623.

No. 07–5456. STURKEY *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 946 So. 2d 790.

No. 07–5458. GREEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–5460. FISHER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 229 Fed. Appx. 63.

No. 07–5461. FELDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 951.

No. 07–5462. VAN WAEYENBERGHE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 481 F. 3d 951.

No. 07–5463. LIGHTY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 281.

No. 07–5464. MARTOCCI ET UX. *v.* BOWASKIE ICE HOUSE ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 7 N. Y. 3d 916, 860 N. E. 2d 985.

No. 07–5465. TODD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5466. BERRY *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 386.

No. 07–5467. SCOTT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 07–5469. PETERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 801.

No. 07–5470. OPARAJI *v.* NEW YORK CITY DEPARTMENT OF EDUCATION ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–5471. PICKENS *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5474. GONZALEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–5475. FRANCO-DELGADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 722.

No. 07–5476. PETIT-FRERE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5478. NATIVIDAD-HERNANDEZ, AKA HERNANDEZ-LOPEZ, AKA ESCOBEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 416.

No. 07–5479. OSSAI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 485 F. 3d 25.

No. 07–5480. EMERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 496.

No. 07–5481. COLEMAN *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 599.

No. 07–5483. DURAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5485. KEITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–5486. KASHNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 228 Fed. Appx. 234.

No. 07–5488. JENKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–5489. LABOY *v.* ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 362 Ill. App. 3d 1228, 919 N. E. 2d 521.

No. 07–5490. LAWSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 214.

No. 07–5491. VERA-JARA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 687.

No. 07–5492. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 300.

No. 07–5494. QUOC NGUYEN VO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5495. PENNINGTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 07–5496. BLAKE *v.* MELCHING ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 608.

No. 07–5498. KEBE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 304.

No. 07–5499. KLENE *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5500. ROBERTS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 220 S. W. 3d 521.

No. 07–5501. SINCLAIR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 119 Fed. Appx. 304.

No. 07–5504. LASSITER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 230.

No. 07–5505. VALLE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 459 F. 3d 1206.

No. 07–5507. ALLUMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5509. ADKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5510. ASLAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–5511. BACON *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 232 Fed. Appx. 158.

No. 07–5512. BARBER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 298.

No. 07–5513. BROWN *v.* BOONE. Sup. Ct. Ohio. Certiorari denied. Reported below: 113 Ohio St. 3d 1466, 864 N. E. 2d 653.

No. 07–5515. KRASNIQI *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 459.

No. 07–5516. LOWERY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–5517. JACKSON *v.* WAINWRIGHT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5518. MELENDEZ *v.* BRADT, ACTING SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–5520. SERVIN-TERRASAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 249.

No. 07–5521. VAZQUEZ *v.* BLACKWELL ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–5523. TRANTHAM *v.* HOLT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5525. PHILLIPS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–5526. MATA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–5527. MATTHEWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 466 F. 3d 1271.

No. 07–5528. ZERTUCHE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 462.

No. 07–5529. MARQUEZ-CONDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5530. BURLESON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 07–5531. JOHNS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 525.

No. 07–5532. MARTINEZ-OROSCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 693.

No. 07–5534. MORTON *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 07–5535. ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5537. MCKENZIE *v.* HUNTER ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5538. LEFEBVRE *v.* NEW HAMPSHIRE. Super. Ct. N. H., Strafford County. Certiorari denied.

No. 07–5539. JOHNSON *v.* NEW HAMPSHIRE. Super. Ct. N. H., Rockingham County. Certiorari denied.

No. 07–5540. REYNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 457.

No. 07–5541. SALAVERRIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 294.

No. 07–5542. SORRENTINO *v.* BARR LABORATORIES, INC. C. A. 2d Cir. Certiorari denied. Reported below: 218 Fed. Appx. 7.

No. 07–5544. CLEMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 887.

No. 07–5545. CASTRO-ISAQUIRRE *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5546. VALLE-PERCHES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 299.

No. 07–5547. USHER *v.* NEW HAMPSHIRE. Super. Ct. N. H., Rockingham County. Certiorari denied.

No. 07–5548. PARSONS *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5550. DAI NGUYEN *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5551. KELLY *v.* TROMBLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5553. MCCULLOUGH *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 07–5554. TERESHCHUK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–5555. COLVIN *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5556. BANKS *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 07–5557. WAGNER *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 172 Md. App. 738.

No. 07–5558. TUCKER *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 215 Ariz. 298, 160 P. 3d 177.

No. 07–5559. YANNI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 374.

No. 07–5560. TRICE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 484 F. 3d 470.

No. 07–5561. TIMMONS *v.* MANATT, PHELPS & PHILLIPS, LLP, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 718.

No. 07–5562. SKILLICORN *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 475 F. 3d 965.

No. 07–5563. MITCHELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 3d 762.

No. 07–5564. ANDRIANO *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 215 Ariz. 497, 161 P. 3d 540.

No. 07–5565. BOSLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 638.

No. 07–5566. BOCHICCHIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 305.

No. 07–5567. RIVERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 223 Fed. Appx. 50.

No. 07–5569. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 523.

No. 07–5571. ROBINSON *v.* SMITH ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–5572. LOPEZ-GAMBOA *v.* UTTECHT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 07–5573. FLORES-CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 659.

No. 07–5575. WAGNER *v.* WALLACE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–5576. PEREZ-GALLEGOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 218 Fed. Appx. 37.

No. 07–5577. KIRCH *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 572.

No. 07–5578. SAI ZHAO JIANG *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 07–5579. LUGO-BALDERAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 817.

No. 07–5580. JENKINS *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 618.

No. 07–5583. SHELTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5585. ARNULFO-SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 796.

No. 07–5586. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 875.

No. 07–5591. GRAHAM *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 240.

No. 07–5598. CELIO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 818.

No. 07–5599. TRENT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 3d 1114.

No. 07–5602. MARTIN *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 369 Ill. App. 3d 1059, 932 N. E. 2d 1226.

No. 07–5603. KRUEGER *v.* NEW HAMPSHIRE. Super. Ct. N. H., Hillsborough County, Southern Dist. Certiorari denied.

No. 07–5604. LAVALLEE *v.* NEW HAMPSHIRE. Super. Ct. N. H., Hillsborough County, Southern Dist. Certiorari denied.

No. 07–5605. MARTI *v.* NEW HAMPSHIRE. Super. Ct. N. H., Strafford County. Certiorari denied.

No. 07–5607. WILLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 240.

No. 07–5610. BLACKBIRD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 574.

No. 07–5614. DOUGLAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 324.

No. 07–5617. GONZALEZ *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 07–5620. NORTHCUTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 789.

No. 07–5622. NUNN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–5623. MONETTE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 64 M. J. 440.

No. 07–5625. SILVA *v.* NEW HAMPSHIRE. Super. Ct. N. H., Hillsborough County, Southern Dist. Certiorari denied.

No. 07–5627. SALDANA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5631. WILLIAMS *v.* KANSAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 510.

No. 07–5637. RUSSELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 376.

No. 07–5641. MOLINA MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 131.

No. 07–5644. McNeil *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 07–5645. Ortiz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 638.

No. 07–5647. Strong *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 452.

No. 07–5648. Kitzelman *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 911.

No. 07–5649. Palmer *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 508.

No. 07–5650. Jock *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 126.

No. 07–5651. Mathews *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 418.

No. 07–5653. Estrada *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 286.

No. 07–5655. Hinton *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 07–5657. Waters *v.* Escalante et al. C. A. 9th Cir. Certiorari denied.

No. 07–5658. Terry *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 07–5661. Villegas Carranza *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 399.

No. 07–5663. Elfand *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 07–5664. Paz-Guardado *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 366.

No. 07–5666. Wilson *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 223 Fed. Appx. 3.

No. 07–5667. Allum *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 550.

No. 07–5668. ARREDONDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 885.

No. 07–5669. ARAUGO-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 327.

No. 07–5671. LOPEZ-AYALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 415.

No. 07–5672. KINES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5674. WINNINGHAM *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 719.

No. 07–5679. RIVERA, AKA OCHOA, AKA RAMIREZ *v.* UNITED STATES (Reported below: 234 Fed. Appx. 264); ANTUNA-MORAN *v.* UNITED STATES (488 F. 3d 1048); PENA-LOPEZ *v.* UNITED STATES (231 Fed. Appx. 372); DIAZ-BEARD *v.* UNITED STATES (228 Fed. Appx. 489); PEREZ-GUILLEN, AKA BONILLA *v.* UNITED STATES (229 Fed. Appx. 345); CRUZ-JAIMES *v.* UNITED STATES (230 Fed. Appx. 455); GUTIERREZ-ARRIAGA, AKA RAMIREZ-ARRIAGA *v.* UNITED STATES (237 Fed. Appx. 930); MARTINEZ-FIGUOA, AKA PENA-MARTINEZ *v.* UNITED STATES (234 Fed. Appx. 278); MACIAS-MEDINA *v.* UNITED STATES (230 Fed. Appx. 437); RAMON-SALDIVAR, AKA SALDIVAR *v.* UNITED STATES (230 Fed. Appx. 436); and DE LEON-ALVAREZ *v.* UNITED STATES (234 Fed. Appx. 304). C. A. 5th Cir. Certiorari denied.

No. 07–5680. JOHNSON *v.* OHIO UNIVERSITY. C. A. 6th Cir. Certiorari denied.

No. 07–5682. JOSEPH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 206 Fed. Appx. 80.

No. 07–5683. WATSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 480 F. 3d 1175.

No. 07–5684. WELLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 378.

No. 07–5688. DAVILA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 287.

No. 07–5689. CARACHURE-MENDOZA, AKA MARTINEZ-ARROYO *v.* UNITED STATES (Reported below: 225 Fed. Appx. 320);

CENICEROS-FACIO, aka PINEDA-RAMIREZ *v.* UNITED STATES (226 Fed. Appx. 432); CENTENO-ESCOBEDO *v.* UNITED STATES (226 Fed. Appx. 439); GARCIA-MUNOZ *v.* UNITED STATES (225 Fed. Appx. 322); HERNANDEZ-GALLARDO *v.* UNITED STATES (226 Fed. Appx. 432); HERRERA-MEJIA *v.* UNITED STATES (226 Fed. Appx. 436); JUAREZ-ENRIQUEZ, aka JUAREZ-ENRIQUE *v.* UNITED STATES (226 Fed. Appx. 433); MARTINEZ-GARCIA *v.* UNITED STATES (226 Fed. Appx. 430); MONTES-GARCIA *v.* UNITED STATES (225 Fed. Appx. 322); REYES-LUNA *v.* UNITED STATES (226 Fed. Appx. 434); and RODRIGUEZ-RIDRIGUEZ *v.* UNITED STATES (226 Fed. Appx. 433). C. A. 5th Cir. Certiorari denied.

No. 07–5691. CANTONE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 466.

No. 07–5692. DIXON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 169.

No. 07–5693. BUSTILLOS-PORTILLO, aka VENZOR-ARTIAGA *v.* UNITED STATES (Reported below: 226 Fed. Appx. 437); FRANCISCO *v.* UNITED STATES (235 Fed. Appx. 206); IBARRA-IBARRA *v.* UNITED STATES (226 Fed. Appx. 436); and RIVERA *v.* UNITED STATES (226 Fed. Appx. 440). C. A. 5th Cir. Certiorari denied.

No. 07–5695. ROSQUETE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 737.

No. 07–5696. SKRZYPEK ET UX. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 577.

No. 07–5697. ESTES *v.* NEW HAMPSHIRE. Super. Ct. N. H., Strafford County. Certiorari denied.

No. 07–5699. OVERDEAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 930.

No. 07–5700. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 407.

No. 07–5701. CARTER *v.* BLAKE. C. A. 8th Cir. Certiorari denied.

No. 07–5703. ESPINOSA-CONTRERAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 481.

No. 07–5706. JORDAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 485 F. 3d 982.

No. 07–5708. PRATT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 532.

No. 07–5711. STEPTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 283.

No. 07–5716. PHILLIPS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 64 M. J. 410.

No. 07–5719. EREME *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–5725. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 189.

No. 07–5731. MARIN-COLON, AKA MARCIAL-HERNANDEZ, AKA TORRES-SALINAS, AKA SALINAS-GONZALES, AKA COLON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 287.

No. 07–5734. MCCOY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5735. MENDOZA-TORRES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 07–5738. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 639.

No. 07–5740. KELLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–5746. ROLON-AYALA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 1.

No. 07–5747. MALPICA-GARCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 489 F. 3d 393.

No. 07–5751. ANDERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 705.

No. 07–5752. BORREGO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 729.

No. 07–5753. BOYD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–5755. BACON *v.* MINNER, GOVERNOR OF DELAWARE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 229 Fed. Appx. 96.

No. 07–5756. BUTLER *v.* WALKER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5758. SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 606.

No. 07–5766. ABADIA *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 217 Fed. Appx. 954.

No. 07–5769. OROZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–5771. COOPER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 743.

No. 07–5772. STONEROOK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–5776. LABRADA-BUSTAMANTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 644.

No. 07–5777. MAGAZINE *v.* WHITE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 219.

No. 07–5781. KOKOSKI *v.* FELTS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 107.

No. 07–5784. MYERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–5786. TREVINO-SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 383.

No. 07–5789. SMITH *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 563.

No. 07–5790. ROMERO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 491 F. 3d 1173.

No. 07–5794. PADGETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 223.

No. 07–5796. FERRELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 485 F. 3d 687.

No. 07–5799. GARRETT *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 957 So. 2d 1004.

No. 07–5800. GARNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 792.

No. 07–5802. GONZALEZ-CERVANTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 588.

No. 07–5804. GONZALEZ-FLORES *v.* UNITED STATES (Reported below: 228 Fed. Appx. 491); MUNGIA-PORTILLO *v.* UNITED STATES (484 F. 3d 813); MARTINEZ, AKA AYGUASBIBA *v.* UNITED STATES (228 Fed. Appx. 498); ESPINOSA-GARCIA *v.* UNITED STATES (230 Fed. Appx. 428); CHAVEZ-CASTRO *v.* UNITED STATES (230 Fed. Appx. 457); SOSA-HERNANDEZ *v.* UNITED STATES (234 Fed. Appx. 294); REYES-JUAREZ *v.* UNITED STATES (234 Fed. Appx. 290); ALVAREZ-CASTANEDA *v.* UNITED STATES (234 Fed. Appx. 296); and VIGIL-RODRIGUEZ, AKA ROBLES *v.* UNITED STATES (230 Fed. Appx. 430). C. A. 5th Cir. Certiorari denied.

No. 07–5805. BRADLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 934.

No. 07–5806. BAILEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 223 Fed. Appx. 157.

No. 07–5807. ORTIZ PORTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 635.

No. 07–5808. PENA, AKA PENA RAFAELE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 589.

No. 07–5811. JAMESON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 478 F. 3d 1204.

No. 07–5812. SCHIFF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 738.

No. 07–5815. WILSON, AKA ODOM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5816. RODRIGUEZ-MEJIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 269.

No. 07–5817. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 487 F. 3d 618.

No. 07–5836. REDLESKI *v.* MCBRIDE, WARDEN. Cir. Ct. Preston County, W. Va. Certiorari denied.

No. 07–5837. LONGORIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 885.

No. 07–5840. COOLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 392.

No. 07–5841. LAINE *v.* GEORGETOWN UNIVERSITY ET AL. Ct. App. D. C. Certiorari denied.

No. 07–5842. ROLON AYALA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 1.

No. 07–5854. SCROGGINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 3d 824.

No. 07–5855. REYNAUD *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 401.

No. 07–5857. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 194.

No. 07–5862. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 307.

No. 07–5866. MENDOZA CARRANZA *v.* WADDINGTON, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 777.

No. 07–5874. WASHINGTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 220 Fed. Appx. 1.

No. 07–5880. CURRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–5881. GREEN, AKA MCCLAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 408.

No. 07–5882. HERNANDEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 3d 270.

No. 07–5885. SCHOENTHAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 694.

No. 07–5886. JENKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 505.

No. 07–5888. JUDD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–5890. JUNG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 473 F. 3d 837.

No. 07–5892. MCCREE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 860.

No. 07–5893. SHI PENG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–5898. BAEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–5903. FOLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 218 Fed. Appx. 139.

No. 07–5904. HERNANDEZ-JUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 980.

No. 07–5905. HILL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 825.

No. 07–5906. GORMAN *v.* MERRILL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 07–5910. MEDINA-GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 281.

No. 07–5913. DIXON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 Fed. Appx. 257.

No. 07–5917. HANNA *v.* JEFFREYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5919. GUSMAN *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 231 Fed. Appx. 179.

No. 07–5925. LOVING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 922.

No. 07–5927. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 803.

No. 07–5929. MORALES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–5930. NICHOLS, AKA JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 770.

No. 07–5933. GARCIA-CEBREROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 476.

No. 07–5934. VITTEK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 469.

No. 07–5935. ROJAS DE PAZ *v.* UNITED STATES (Reported below: 231 Fed. Appx. 714); and SANDOVAL-SAUCEDO *v.* UNITED STATES (235 Fed. Appx. 500). C. A. 9th Cir. Certiorari denied.

No. 07–5942. WAGNER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 35.

No. 07–5943. ASPEN *v.* RODEN, SUPERINTENDENT, NORTH CENTRAL CORRECTIONAL INSTITUTION, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 480 F. 3d 571.

No. 07–5946. BONEY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 907.

No. 07–5949. WILLIAMS *v.* UNITED STATES (two judgments). C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 367 (second judgment).

No. 07–5950. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 339.

No. 07–5951. HALLING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 691.

No. 07–5952. MEADA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–5953. FREY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 224 Fed. Appx. 93.

No. 07–5955. KAUFMAN *v.* COMMISSION FOR LAWYER DISCIPLINE. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 197 S. W. 3d 867.

No. 07–5957. SAENZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 811.

No. 07–5958. ROMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 299.

No. 07–5960. WALLACE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–5967. MARTINEZ-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 990.

No. 07–5968. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 952.

No. 07–5969. MARTINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 3d 184.

No. 07–5970. CROSS *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 07–5979. ROMERO-DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 705.

No. 07–5983. GLASCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 951.

No. 07–5984. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 426.

No. 07–5987. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5991. BENNETT *v.* STOTLER, JUDGE, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 224 Fed. Appx. 4.

No. 07–5992. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 292.

No. 07–5993. ESPINOSA-CRUZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 244 Fed. Appx. 421.

No. 07–5994. DUQUE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 225 Fed. Appx. 43.

No. 07–5995. CALDWELL *v.* UNITED STATES; and
No. 07–6015. BRUNO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 3d 304.

No. 07–5997. OTTMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 841.

No. 07–5998. MORALES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 800.

No. 07–6000. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 3d 1067.

No. 07–6003. KINCADE *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 226 Fed. Appx. 991.

No. 07–6004. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 486 F. 3d 1239.

No. 07–6006. WASHINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 280.

No. 07–6007. THORNTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–6010. WEEDEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 405.

No. 07–6013. STEVENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 3d 232.

No. 07–6014. STRONG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 485 F. 3d 985.

No. 07–6017. ROLLE *v.* UNITED STATES MARSHALS SERVICE ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6020. CANTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 694.

No. 07–6021. ELLABY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 623.

No. 07–6022. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6023. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 795.

No. 07–6029. LACHANCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 237.

No. 07–6030. NICHOLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6036. NAILOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 3d 1018.

No. 07–6037. MERCADO PATINO, AKA PEREZ GOMEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 941.

No. 07–6039. WARREN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–6040. CLAUDIO-GARCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 483 F. 3d 124.

No. 07–6041. DANSER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–6043. GORDON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–6044. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–6047. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–6048. SOUIMANIPHANH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–6049. ALVARADO-HUERTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 324.

No. 07–6050. TROTTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–6055. HUERTA-ZARCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 822.

No. 07–6057. HARDY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 209 Fed. Appx. 906.

No. 07–6058. CLARK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–6059. CALIX-MATUTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 835.

No. 07–6064. MICHTAVI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 857.

No. 07–6067. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 714.

No. 07–6071. WOOD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 368.

No. 07–6073. POULLARD, AKA ORISHA-NLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–6075. REYES *v.* WENDT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 244.

No. 07–6076. BRIKA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 3d 450.

No. 07–6078. SAMANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 535.

No. 07–6093. GILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 282.

No. 07–6097. GONZALES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–6098. STOKES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 799.

No. 07–6106. GALLASHAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 792.

No. 07–6108. WILLIAMS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 488 F. 3d 1004.

No. 07–6110. PEASE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6111. WRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 239.

No. 07–6113. WALLACE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–6119. HOLTHAUS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 486 F. 3d 451.

No. 07–6120. GREENIDGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 844.

No. 07–6125. DADA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–6126. DURAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 408.

No. 07–6139. BRAVO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 489 F. 3d 1.

No. 07–6141. MORRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–6149. VAZQUEZ-GARCIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 544.

No. 07–6155. BARRAGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 257.

No. 07–6157. WOODSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–6161. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 06–1305. PENNSYLVANIA *v.* GAUL. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 590 Pa. 175, 912 A. 2d 252.

No. 06–1327. UTAH *v.* VON FERGUSON. Sup. Ct. Utah. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 169 P. 3d 423.

No. 06–1345. MIPRO HOMES, L. L. C., ET AL. *v.* MOUNT LAUREL TOWNSHIP, NEW JERSEY. Sup. Ct. N. J. Motions of AvalonBay Communities, Inc., and American Farm Bureau Federation for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 188 N. J. 531, 910 A. 2d 617.

No. 06–1350. OSBORNE *v.* HARTFORD LIFE & ACCIDENT INSURANCE CO. C. A. 6th Cir. Motion to substitute the Estate of Bruce R. Osborne in place of Bruce Osborne, deceased, granted. Certiorari denied. Reported below: 465 F. 3d 296.

No. 06–1372. BERGER ET AL. *v.* ROSSIGNOL SKI CO., INC. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 214 Fed. Appx. 981.

No. 06–1380. ESTATE OF PARKER *v.* SEDONA GOLF RESORT, L. C. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 204 Fed. Appx. 598.

No. 06–1396. SCHOLL *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 463 F. 3d 1328.

No. 06–1434. MEDTRONIC SOFAMOR DANEK, INC., FKA SOFAMORE DANEK GROUP, INC., ET AL. *v.* DEPUY SPINE, INC., FKA DEPUY ACROMED, INC., ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 469 F. 3d 1005.

No. 06–1471. GAY ET AL. *v.* MORGAN. C. A. 3d Cir. Motions of Chamber of Commerce of the United States of America and Defense Research Institute for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 471 F. 3d 469.

No. 06–1497. VISION CHURCH ET AL. *v.* VILLAGE OF LONG GROVE, ILLINOIS. C. A. 7th Cir. Motion of Baptist General Conference et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 468 F. 3d 975.

No. 06–1533. FARMER-PAELLMAN *v.* BROWN & WILLIAMSON TOBACCO CORP.; and

No. 06–1534. HURDLE ET AL. *v.* R. J. REYNOLDS TOBACCO CO. ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 471 F. 3d 754.

No. 06–1545. R. J. REYNOLDS TOBACCO CO. ET AL. *v.* ENGLE ET AL. Sup. Ct. Fla. Motions of Product Liability Advisory Council, Inc., Washington Legal Foundation, Professors Who Study Preemptive Law, and Chamber of Commerce of the United States of America for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 945 So. 2d 1246.

No. 06–1582. PFIZER INC. *v.* APOTEX, INC., FKA TORPHARM, INC. C. A. Fed. Cir. Motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 480 F. 3d 1348.

No. 06–1586. OFFICIAL COMMITTEE OF UNSECURED CREDITORS ET AL. *v.* ADELPHIA COMMUNICATIONS CORP. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 222 Fed. Appx. 7.

No. 06–1593. COWETT *v.* TCH PEDIATRICS, INC., ET AL. Ct. App. Ohio, Mahoning County. Motions of Semmelweis Society International and Association of American Physicians and Surgeons, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied.

No. 06–1614. POOH BAH ENTERPRISES, INC., ET AL. *v.* CITY OF CHICAGO, ILLINOIS, ET AL. Sup. Ct. Ill. Motion of First Amendment Lawyers Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 224 Ill. 2d 390, 865 N. E. 2d 133.

No. 06–1642. TEVA PHARMACEUTICALS USA, INC., ET AL. *v.* ELI LILLY & CO. ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 471 F. 3d 1369.

No. 06–1674. LOGAN *v.* HORMEL FOODS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in

the consideration or decision of this petition. Reported below: 217 Fed. Appx. 942.

No. 06–1693. NANAN ET UX. *v.* STATE FARM FIRE & CASUALTY CO. Ct. App. Ga. Motion of petitioners for sanctions denied. Certiorari denied.

No. 06–1700. MISSOURI *v.* MCFADDEN. Sup. Ct. Mo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 216 S. W. 3d 673.

No. 06–10438. DYE *v.* BURT, WARDEN. C. A. 6th Cir. Motion of Prison Legal Services of Michigan et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 197 Fed. Appx. 378.

No. 06–10988. FARRIS *v.* STANDARD MORTGAGE ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 06–11508. SCHERER *v.* MERCK & CO., INC., ET AL. C. A. 10th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 06–11622. EMMETT *v.* KELLY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 3d 154.

Statement of JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, respecting the denial of certiorari.

The petition for certiorari seeking review of the Court of Appeals judgment upholding petitioner's death sentence was filed on June 1, 2007, well in advance of its June 27 due date. Under our normal practice, that timely petition would have been reviewed at our Conference on September 24, 2007. Nevertheless, Virginia set an execution date of June 13, 2007, making it impossible for us to consider the merits of the petition in the normal course, and making it necessary for the Court to rule on petitioner's last-minute application for a stay of execution. Although only four Members of the Court voted to grant that application, the Governor of Virginia, recognizing that basic fairness demands that capital defendants be given the opportunity to complete the legal appeals process prior to execution, granted petitioner a reprieve to afford us the opportunity to give the petition the careful consideration that it clearly merited.

As the majority opinion filed by Judge Traxler and the dissenting opinion filed by Judge Gregory demonstrate, reasonable judges can and do disagree about the merits of petitioner's challenge to the adequacy of his counsel's representation at the penalty phase of his trial. See 474 F. 3d 154 (CA4 2007). Moreover, those opinions also make it clear that a thorough examination of the trial record, as well as the evidence that he claims his lawyers should have discovered, is essential for a correct appraisal of the merits. Having conducted that review, I do not dissent from the Court's decision to deny certiorari. I do, however, remain firmly convinced that no State should be allowed to foreshorten this Court's orderly review of federal constitutional claims of first-time habeas petitioners by executing prisoners before that review can be completed.

Both the interest in avoiding irreversible error in capital cases, and the interest in the efficient management of our docket, would be served by a routine practice of staying all executions scheduled in advance of the completion of our review of the denial of a capital defendant's first application for a federal writ of habeas corpus. Such a practice would be faithful to the distinction between first and successive habeas petitions recognized by Congress in the Antiterrorism and Effective Death Penalty Act of 1996 and would accord death row inmates the same, rather than lesser, procedural safeguards as ordinary litigants. It is a practice that JUSTICE GINSBURG and I have followed in the past and one that I hope a majority of the Court will eventually endorse.

No. 07–7. ARAVE, WARDEN *v.* LANKFORD. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 468 F. 3d 578.

No. 07–15. HAMDAN *v.* GATES, SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir. Certiorari before judgment denied.

No. 07–24. BILAL *v.* BP AMERICA, INC., ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 215 Fed. Appx. 504.

No. 07–30. SYSTEMS UNLIMITED, INC. *v.* CISCO SYSTEMS, INC., ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER

took no part in the consideration or decision of this petition. Reported below: 221 Fed. Appx. 950 and 228 Fed. Appx. 854.

No. 07–33. OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS *v.* ARD. Sup. Ct. S. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 372 S. C. 318, 642 S. E. 2d 590.

No. 07–56. ESTATE OF LOWE, BY HARRIS, COOK COUNTY PUBLIC GUARDIAN AND SUPERVISED ADMINISTRATOR *v.* APEX TAX INVESTMENTS, INC., ET AL. Sup. Ct. Ill. Motion of Mental Health America et al. for leave to file a brief as *amici curiae* granted. Motion of Sargent Shriver National Center on Poverty Law et al. for leave to file a brief as *amici curiae* out of time denied. Certiorari denied. Reported below: 225 Ill. 2d 208, 867 N. E. 2d 941.

No. 07–123. LITTLETON *v.* WAL-MART STORES, INC. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 231 Fed. Appx. 874.

No. 07–5484. LORENZ *v.* WAL-MART STORES, INC. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 225 Fed. Appx. 302.

Rehearing Denied

No. 06–1407. DAVIS *v.* TERRY, WARDEN, 551 U. S. 1145;

No. 06–7194. TAYLOR *v.* UNITED STATES, 551 U. S. 1165;

No. 06–8285. VEGA-FIGUEROA *v.* UNITED STATES, 549 U. S. 1156;

No. 06–8781. ROUSSOS *v.* UNITED STATES, 551 U. S. 1168;

No. 06–10707. IN RE GHEE, 551 U. S. 1130;

No. 06–10807. GEIGER *v.* UNITED STATES, 550 U. S. 975;

No. 06–10808. GRAY *v.* WHITMIRE ET AL., 551 U. S. 1150;

No. 06–11289. ALFORD *v.* KOVACS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, 551 U. S. 1153; and

No. 06–11563. IN RE LEASURE, 551 U. S. 1144. Petitions for rehearing denied.

No. 06–1169. HAMDAN *v.* GATES, SECRETARY OF DEFENSE, ET AL.; and KHADR *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL., 550 U. S. 929;

No. 06–7876. PORTER *v.* UNITED STATES, 551 U. S. 1166; and No. 06–10733. CICHOWSKI ET AL. *v.* GENERAL CASUALTY INSURANCE CO. ET AL., 551 U. S. 1149. Motions for leave to file petitions for rehearing denied.

OCTOBER 3, 2007

Miscellaneous Order

No. 07–5439. BAZE ET AL. *v.* REES, COMMISSIONER, KENTUCKY DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Ky. [Certiorari granted, 551 U. S. 1192.] Order granting the petition for writ of certiorari is amended as follows: Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 1, 2, and 3 presented by the petition. Petitioners' brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Monday, November 5, 2007. Respondents' brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Monday, December 3, 2007. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, December 28, 2007. *Amici curiae* briefs are to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., seven days after the brief for the party supported is filed, or if in support of neither party, within seven days after petitioner's brief is filed. Reported below: 217 S. W. 3d 207.

OCTOBER 5, 2007

Dismissal Under Rule 46

No. 06–1699. MISSOURI *v.* MARCH. Sup. Ct. Mo. Certiorari dismissed under this Court's Rule 46. Reported below: 216 S. W. 3d 663.

OCTOBER 9, 2007

Certiorari Granted—Vacated and Remanded

No. 06–1535. HUDSON, WARDEN *v.* SPISAK. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Carey* v. *Musladin*, 549 U. S. 70 (2006), and *Schriro* v. *Landrigan*, 550 U. S. 465 (2007). JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER

would deny the petition for writ of certiorari. Reported below: 465 F. 3d 684.

Certiorari Dismissed

No. 07–5780. MARTIN *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 07M16. MIRAYES *v.* NEW JERSEY; and

No. 07M17. STIGGERS *v.* WASHINGTON MUTUAL BANK. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06–1265. KLEIN & CO. FUTURES, INC. *v.* BOARD OF TRADE OF THE CITY OF NEW YORK ET AL. C. A. 2d Cir. [Certiorari granted, 550 U. S. 956.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–1322. FEDERAL EXPRESS CORP. *v.* HOLOWECKI ET AL. C. A. 2d Cir. [Certiorari granted, 551 U. S. 1102.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–6117. IN RE FOSTER;

No. 07–6265. IN RE AMES;

No. 07–6290. IN RE JOHNSON;

No. 07–6323. IN RE WILLIAMS; and

No. 07–6369. IN RE CALDWELL. Petitions for writs of habeas corpus denied.

No. 07–5676. IN RE DUNLAP;

No. 07–5813. IN RE ROBERTSON;

No. 07–5835. IN RE SIMON;

No. 07–5875. IN RE BUTLER;

No. 07–5931. IN RE ISRAEL; and

No. 07–6238. IN RE MARO. Petitions for writs of mandamus denied.

Certiorari Denied

No. 06–1361. SFARCIOC *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied.

No. 06–1470. TOWN OF NORWOOD, MASSACHUSETTS *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. 1st Cir. Certiorari denied. Reported below: 476 F. 3d 18.

No. 06–1603. KENNEDY *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 786.

No. 06–1613. EL-MASRI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 479 F. 3d 296.

No. 06–1616. CHESTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–1692. KLEIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 787.

No. 06–1710. ELLISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 462 F. 3d 557.

No. 06–1716. ROCKSTEAD ET AL. *v.* CITY OF CRYSTAL LAKE, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 3d 963.

No. 06–11488. ORDINOLA *v.* HACKMAN, ACTING UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 478 F. 3d 588.

No. 06–11599. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 916.

No. 06–11644. LEAHY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 473 F. 3d 401.

No. 06–11752. BORDEAUX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 235.

No. 06–11804. SONNIER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 3d 349.

No. 06–12066. CANTU, AKA CANTU-MONTALVO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 783.

No. 06–12112. SPISAK *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 465 F. 3d 684.

No. 07–8. NATIONALIST MOVEMENT *v.* CITY OF YORK, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 481 F. 3d 178.

No. 07–9. JOHNSON ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 467 F. 3d 56.

No. 07–18. WHITAKER *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 133 Wash. App. 199, 135 P. 3d 923.

No. 07–19. DEPARTMENT OF THE ARMY *v.* KIRKENDALL. C. A. Fed. Cir. Certiorari denied. Reported below: 479 F. 3d 830.

No. 07–22. MOSEY ET AL. *v.* DIPPIN' DOTS, INC.; and
No. 07–157. DIPPIN' DOTS, INC., ET AL. *v.* MOSEY ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 476 F. 3d 1337.

No. 07–31. FORT ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 F. 3d 1106.

No. 07–72. COLOIAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 480 F. 3d 47.

No. 07–83. SMITH *v.* WESTON ET AL. Sup. Ct. N. H. Certiorari denied.

No. 07–87. BREEN ET AL. *v.* SOUTHERLAND ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 3d 325.

No. 07–90. WARD *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–91. DITCH *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied. Reported below: 479 F. 3d 249.

No. 07–94. MIDDLETON ET AL. *v.* TRUSTEES OF THE SOUTHERN CALIFORNIA BAKERY DRIVERS SECURITY FUND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 3d 642.

No. 07–95. COMPAQ COMPUTER CORP. *v.* GRIDER ET UX., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. Ct. Civ. App. Okla. Certiorari denied.

No. 07–96. CONCERNED COMMUNITY INVOLVED DEVELOPMENT, INC. *v.* CITY OF HOUSTON, TEXAS, ET AL. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 209 S. W. 3d 666.

No. 07–97. CAZOE *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 207 Fed. Appx. 190.

No. 07–98. AUTOMATED SWITCHING & CONTROLS, INC., ET AL. *v.* AMELCO INDUSTRIES, INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–104. RAISER *v.* CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 804.

No. 07–109. PLOUGH ET AL. *v.* LAVELLE ET AL. Ct. App. Ohio, Portage County. Certiorari denied. Reported below: 170 Ohio App. 3d 720, 868 N. E. 2d 1055.

No. 07–111. MCGEE *v.* HELMUS ET AL. Ct. App. Ohio, Erie County. Certiorari denied.

No. 07–112. KLINE *v.* BUDOFF ET AL. Ct. App. Ariz. Certiorari denied.

No. 07–113. CITY OF CINCINNATI, OHIO *v.* CLEVELAND CONSTRUCTION, INC. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 169 Ohio App. 3d 627, 864 N. E. 2d 116.

No. 07–114. BURNS *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 218 S. W. 3d 500.

No. 07–117. WU *v.* W. L. GORE & ASSOCIATES, INC. Sup. Ct. Del. Certiorari denied. Reported below: 918 A. 2d 1171.

No. 07–119. WENDT *v.* THOMAS, SHERIFF, CARTERET COUNTY, NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 174 N. C. App. 368, 620 S. E. 2d 734.

No. 07–125. MATTES *v.* BALLYS LAS VEGAS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 567.

No. 07–126. ABBOTT *v.* OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 925 A. 2d 482.

No. 07–127. WEDGEWOOD HEALTH CARE REALTY, LLC, DBA GALION NURSING AND REHABILITATION CENTER *v.* OHIO DEPARTMENT OF HEALTH. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 07–134. VANCE *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 07–135. TAYLOR *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 282 Ga. 44, 644 S. E. 2d 850.

No. 07–140. LEE *v.* YORK COUNTY SCHOOL DIVISION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 484 F. 3d 687.

No. 07–142. MEMORIAL DAY WEEKEND SALUTE TO VETERANS CORP. *v.* WICKERSHAM ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 481 F. 3d 591.

No. 07–143. BAILEY *v.* PAPA JOHN'S USA, INC. (two judgments). C. A. 6th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 200 (first judgment); 211 Fed. Appx. 417 (second judgment).

No. 07–144. BISNO ET AL. *v.* NORTH BEVERLY PARK HOMEOWNERS ASSN., INC. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 147 Cal. App. 4th 762, 54 Cal. Rptr. 3d 644.

No. 07–148. CONAGRA, INC., ET AL. *v.* UNITED STATES EX REL. BAHRANI. C. A. 10th Cir. Certiorari denied. Reported below: 465 F. 3d 1189.

No. 07–149. FLUOR ENTERPRISES, INC. *v.* MICHIGAN DEPARTMENT OF TREASURY, REVENUE DIVISION. Sup. Ct. Mich. Certiorari denied. Reported below: 477 Mich. 170, 730 N. W. 2d 722.

No. 07–150. HAKIM *v.* CANNON AVENT GROUP, PLC, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 479 F. 3d 1313.

No. 07–154. VIVENDI, S. A. *v.* GERARD ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–160. LALIBERTE ET AL. *v.* PACIFIC MERCANTILE BANK. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. Reported below: 147 Cal. App. 4th 1, 53 Cal. Rptr. 3d 745.

No. 07–168. BLADES ET AL. *v.* HAMM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 264.

No. 07–182. TALMON *v.* CENTRAL STATES, SOUTHEAST & SOUTHWEST AREAS PENSION FUND. C. A. 6th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 467.

No. 07–190. CIEKLINSKI ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 727.

No. 07–220. RENAISSANCE GREETING CARDS, INC. *v.* DOLLAR TREE STORES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 239.

No. 07–223. JONES ET AL. *v.* MONTANA UNIVERSITY SYSTEM. Sup. Ct. Mont. Certiorari denied. Reported below: 337 Mont. 1, 155 P. 3d 1247.

No. 07–227. WHITE-BATTLE *v.* MOSS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 304.

No. 07–232. BRILL *v.* ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Certiorari denied.

No. 07–246. MAJOR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 268.

No. 07–251. RODRIQUE ET AL. *v.* ECKERD CORP. C. A. 11th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 792.

No. 07–256. THOMPSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 344 Ill. App. 3d 1217, 859 N. E. 2d 318.

No. 07–264. PHILLIPS *v.* DALLAS COUNTY CHILD PROTECTIVE SERVICES UNIT. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 197 S. W. 3d 862.

No. 07–265. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 3d 735.

No. 07–272. SCHULTE *v.* POTTER, POSTMASTER GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 703.

No. 07–274. LYNCH *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 284.

No. 07–278. LEFFLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 248.

No. 07–298. FORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–301. HOLYFIELD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 481 F. 3d 1260.

No. 07–309. ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 647.

No. 07–310. CRUMPLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 832.

No. 07–316. ERICKSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 65 M. J. 221.

No. 07–317. CHAPMAN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 65 M. J. 290.

No. 07–318. TIPPIT *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 65 M. J. 69.

No. 07–327. SOTO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–5036. GUNNINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 336.

No. 07–5043. CASEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 389.

No. 07–5062. STEWART *v.* BROWARD SHERIFF'S OFFICE. C. A. 11th Cir. Certiorari denied.

No. 07–5092. PRICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 357.

No. 07–5111. AREY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 270.

No. 07–5149. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 331.

No. 07–5200. MEAUX *v.* GALTIER ET AL. Sup. Ct. La. Certiorari denied. Reported below: 957 So. 2d 159.

No. 07–5503. SINEGAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 291.

No. 07–5568. RUCOBO-RIOS *v.* MILYARD, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 794.

No. 07–5570. RENDELMAN *v.* GALLEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 314.

No. 07–5590. HAMILTON *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 3d 854.

No. 07–5592. FLORES *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 690.

No. 07–5593. HAGGERTY *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 07–5594. GRAY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5595. STANLEY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–5596. RICH *v.* REESE ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–5597. RICHARDSON *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5601. McCURDY *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 665.

No. 07–5606. MARTIN *v.* WILSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5612. ORTEGA APRECIADO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5613. BECK *v.* SYMMES, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 07–5615. CARSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 590 Pa. 501, 913 A. 2d 220.

No. 07–5616. CLARK *v.* VERNON, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS FAYETTE COUNTY DISTRICT ATTORNEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 228 Fed. Appx. 128.

No. 07–5618. GARDNER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5621. PETERSON *v.* NEW HAMPSHIRE. Super. Ct. N. H., Rockingham County. Certiorari denied.

No. 07–5624. SWENDELL *v.* CLC OF RICHMOND ET AL. Sup. Ct. Va. Certiorari denied.

No. 07–5626. SANTANA *v.* CHEROKEE CASINO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 763.

No. 07–5628. VALGARA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 799.

No. 07–5629. MICHALSKI *v.* NEW YORK. County Ct., Oswego County, N. Y. Certiorari denied.

No. 07–5630. ANDUJAR *v.* RODRIGUEZ ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 486 F. 3d 1199.

No. 07–5632. WILSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 888 A. 2d 13.

No. 07–5636. PALOMINO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–5638. SCOTT *v.* JAMROG, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5639. STEPHEN *v.* HERNANDEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–5640. VIDALES *v.* ABBOTT, ATTORNEY GENERAL OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 240.

No. 07–5642. SENATOR *v.* SENATOR. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 07–5643. WHITE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 209.

No. 07–5646. LUGO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–5652. BRANHAM *v.* MCCONNELL ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5654. CASTILLO *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 742.

No. 07–5656. FREEMAN *v.* COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE. Sup. Ct. Cal. Certiorari denied.

No. 07–5659. COWART *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–5660. CONTE *v.* ZIMMER AIRPORT SHUTTLE. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 951 So. 2d 833.

No. 07–5662. ELLIS *v.* O'CONNER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–5670. PRICE *v.* MCCORMACK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 978.

No. 07–5675. CRENSHAW *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5677. DINSTBER *v.* GEICO INSURANCE CO. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 32 App. Div. 3d 893, 820 N. Y. S. 2d 804.

No. 07–5678. CLUCK *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 07–5685. WEAVER *v.* EMORY UNIVERSITY. Ct. App. Ga. Certiorari denied.

No. 07–5694. REUTTER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 914.

No. 07–5702. CAMACHO *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 282 Conn. 328, 924 A. 2d 99.

No. 07–5705. MARTINEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5712. BAXTER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 07–5713. ACRIVOS *v.* VASKOV, DEPUTY PROTHONOTARY, SUPREME COURT OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 216 Fed. Appx. 224.

No. 07–5715. WAGNER *v.* GOODALL ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 172 Md. App. 716, 728.

No. 07–5718. DOUTHIT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 232 S. W. 3d 69.

No. 07–5720. CARL *v.* KELLER, ACTING SUPERINTENDENT, MID-ORANGE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–5721. WILLIAMS *v.* HERNANDEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5722. THOMPSON *v.* LOONEY'S TAVERN PRODUCTIONS, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 844.

No. 07–5723. WILLIAMS *v.* AYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–5724. BELL *v.* FIZER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 445.

No. 07–5726. MIGUEL *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 924 A. 2d 3.

No. 07–5728. ORTWINE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–5729. DIAZ *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–5730. ELLISON *v.* ROGERS, ADMINISTRATOR, ADULT DIAGNOSTIC AND TREATMENT CENTER, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 484 F. 3d 658.

No. 07–5737. PAGAN *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–5742. MADDEN *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS. C. A. 3d Cir. Certiorari denied.

No. 07–5744. RUPPRECHT *v.* CITY OF PITTSFIELD, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 225 Fed. Appx. 1.

No. 07–5745. ROBERTS *v.* DEPARTMENT OF COMMERCE. C. A. Fed. Cir. Certiorari denied. Reported below: 221 Fed. Appx. 979.

No. 07–5748. LANE *v.* BAKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 290.

No. 07–5749. OSBORNE *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–5754. BLOOM *v.* MCKUNE, WARDEN. Ct. App. Kan. Certiorari denied.

No. 07–5759. TUNSTALL *v.* YENTES ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–5760. TATE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–5764. PFEIFLE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 344.

No. 07–5765. LEATH *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–5767. T. R. V. ET VIR *v.* KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES, AS NEXT FRIEND OF J. S. V., A CHILD, ET AL. Ct. App. Ky. Certiorari denied.

No. 07–5768. TORRES *v.* MCCABE, CORRECTIONAL ADMINISTRATOR I, HARNETT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 252.

No. 07–5770. CARDEN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 309.

No. 07–5773. STRICKLAND *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1222, 931 N. E. 2d 367.

No. 07–5774. BURDEN *v.* OLEN ET AL. C. A. 10th Cir. Certiorari denied.

No. 07–5775. BRIDGES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–5778. LEE *v.* DUDLEY ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5779. MICKEL *v.* WILSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE. C. A. 3d Cir. Certiorari denied.

No. 07–5783. PLATEL *v.* COLORAN ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–5788. TONEY *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–5791. STAFFORD *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 956 So. 2d 525.

No. 07–5792. PARKER *v.* UCHTMAN, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–5793. TURNAGE *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5795. MCCLAIN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5797. HERRERA HERNANDEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–5801. FAHY *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–5803. GRETHEN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 231.

No. 07–5809. MYRON *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 476 F. 3d 716 and 225 Fed. Appx. 434.

No. 07–5814. THOMPSON *v.* MCBRIDE, WARDEN. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 07–5818. MOHIUDDIN *v.* RAYTHEON CO. C. A. 9th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 639.

No. 07–5821. WADE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 950 So. 2d 1248.

No. 07–5822. WILLIFORD *v.* FUNDERBURK ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 843.

No. 07–5827. GLOVER *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 07–5844. GREER *v.* PATRICK COUNTY, VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 233.

No. 07–5850. MCGAUGHY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 485 F. 3d 965.

No. 07–5851. ROBBINS *v.* ZOLLO ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5860. MORRIS *v.* DEWALT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5864. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 926.

No. 07–5865. WARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 486 F. 3d 1212.

No. 07–5867. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 376.

No. 07–5868. DORANTES-POZOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 451.

No. 07–5869. CORLEY *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–5872. WORTH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 394.

No. 07–5873. MARMOLEJOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–5883. SWANSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5884. SANTOS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 38 App. Div. 3d 574, 832 N. Y. S. 2d 582.

No. 07–5912. DURASEVIC ET UX. *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 208 Fed. Appx. 40.

No. 07–5918. FOGLE *v.* ESTEP, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 814.

No. 07–5945. RAMSEYER *v.* SMELSER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5961. CUMMINGS *v.* POLK, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 475 F. 3d 230.

No. 07–5963. MILLS *v.* STREETER. C. A. 5th Cir. Certiorari denied.

No. 07–5972. COULTER *v.* MCCANN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 484 F. 3d 459.

No. 07–5975. MOWER *v.* WEST VIRGINIA. Cir. Ct. Mercer County, W. Va. Certiorari denied.

No. 07–5980. SINKFIELD *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 3d 1013.

No. 07–6027. PENNINGTON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 915 A. 2d 148.

No. 07–6042. DAVIS *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6052. FLORES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 946.

No. 07–6061. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 510.

No. 07–6062. FLOWERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 526.

No. 07–6070. JONES *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–6072. INGHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 486 F. 3d 1068.

No. 07–6084. BISHOP *v.* NEW HAMPSHIRE. Super. Ct. N. H., Hillsborough County, Southern Dist. Certiorari denied.

No. 07–6086. MARIN-CALVILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–6087. MATHIESON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6088. FOSTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–6091. NUNES *v.* RAMIREZ-PALMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 485 F. 3d 432.

No. 07–6092. NELSON *v.* BAYER. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 407.

No. 07–6099. SAVAGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–6100. RIVAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–6103. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 707.

No. 07–6118. COX *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–6129. EDWARDS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 301 Wis. 2d 746, 731 N. W. 2d 382.

No. 07–6130. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 447.

No. 07–6131. CALLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–6134. TORRES-DOMINGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 348.

No. 07–6137. AUDITYAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–6147. SALAYANDIA-REYES *v.* UNITED STATES (Reported below: 235 Fed. Appx. 301); and PENA-RODRIGUEZ *v.* UNITED STATES (235 Fed. Appx. 274). C. A. 5th Cir. Certiorari denied.

No. 07–6152. HEGMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 288.

No. 07–6153. HERNANDEZ-AZUA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 325.

No. 07–6159. TRIPLETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 777.

No. 07–6166. FLUTE *v.* LOVETT ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–6167. HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 462 F. 3d 754.

No. 07–6168. FIELDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 268.

No. 07–6173. WILLIAMSON *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 371 Ill. App. 3d 1233, 936 N. E. 2d 1240.

No. 07–6177. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 297.

No. 07–6185. WEAVER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 220 Fed. Appx. 88.

No. 07–6186. TURNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 168.

No. 07–6187. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 261.

No. 07–6190. FARAH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6193. BORNGNE *v.* DEWALT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6196. CANNON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 220 Fed. Appx. 104.

No. 07–6198. WALSH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 295.

No. 07–6199. MURRAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 224 Fed. Appx. 178.

No. 07–6201. NICHOLSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 790.

No. 07–6203. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–6205. LANG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–6206. AYALA-CORDOVA *v.* UNITED STATES (Reported below: 230 Fed. Appx. 428); GARCIA-GALEANO *v.* UNITED STATES (230 Fed. Appx. 435); DIAZ-MEDINA *v.* UNITED STATES (230 Fed. Appx. 430); RICO-RICO *v.* UNITED STATES (230 Fed. Appx. 432); ESTRADA-MENCIA *v.* UNITED STATES (230 Fed. Appx. 427); CANO-LOPEZ *v.* UNITED STATES (236 Fed. Appx. 43); PEREIRA-CARBALLO *v.* UNITED STATES (230 Fed. Appx. 460); PADILLA-TROCHE *v.* UNITED STATES (244 Fed. Appx. 550); REYNA PULIDO *v.* UNITED STATES (231 Fed. Appx. 385); AYALA-MENDEZ *v.* UNITED STATES (218 Fed. Appx. 313); ESTRADA-VILLALOBOS, AKA AREBALOS-HERRERA *v.* UNITED STATES (231 Fed. Appx. 370); ANGEL-CRUZ, AKA CRUZ-BENITEZ *v.* UNITED STATES (231 Fed. Appx. 377); BARRERA, AKA GUEVARA *v.* UNITED STATES (239 Fed. Appx. 44); ORTEGA-GONZAGA *v.* UNITED STATES (490 F. 3d 393); TEJADA-CALDERON *v.* UNITED STATES (234 Fed. Appx. 211); BERRONES-ESPINOSA, AKA GARCIA-MARTINEZ, AKA RAMIREZ-GARCIA, AKA MARTINEZ-ESPINOSA *v.* UNITED STATES (234 Fed. Appx. 291); MANZO-RODRIGUEZ *v.* UNITED STATES (234 Fed. Appx. 258); RIVERA-GALVEZ *v.* UNITED STATES (241 Fed. Appx. 207); FUENTES, AKA FUENTEZ *v.* UNITED STATES (245 Fed. Appx. 358); MORALES-MARTINEZ *v.* UNITED STATES (496 F. 3d 356); GARCIA-MARTINEZ *v.* UNITED STATES (235 Fed. Appx. 304); GUZMAN *v.* UNITED STATES (235 Fed. Appx. 305); and MORALES-AGUSTINE *v.* UNITED STATES (235 Fed. Appx. 280). C. A. 5th Cir. Certiorari denied.

No. 07–6208. DYKES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 834.

No. 07–6210. RUBIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 306.

No. 07–6211. SAENZ-MACIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 374.

No. 07–6215. JOSEPH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 833.

No. 07–6216. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6220. DOE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 3d 1154.

No. 07–6221. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 469 F. 3d 568.

No. 07–6226. KELLY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 328.

No. 07–6230. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 858.

No. 07–6233. TOVES CABACCANG ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 750.

No. 07–6239. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6244. JUAREZ-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 348.

No. 07–6253. OGLESBY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 503.

No. 07–6254. MILLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 485 F. 3d 219.

No. 07–6255. ROY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 111.

No. 07–6257. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 352.

No. 07–6260. PRESLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 487 F. 3d 1346.

No. 07–6261. TAM MINH NGUYEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 470.

No. 07–6262. SOUTHERLAND *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 486 F. 3d 1355.

No. 07–6263. MARTINEZ-ROSADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 489 F. 3d 1.

No. 07–6267. BYRD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 245.

No. 07–6269. ARTLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 3d 813.

No. 07–6273. KONSAVICH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 263.

No. 07–6274. MALDONADO-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 417.

No. 07–6277. SIYI ZHOU *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 198 Fed. Appx. 177.

No. 07–6279. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 255.

No. 07–6280. DIMAS-BARNICA *v.* UNITED STATES (Reported below: 230 Fed. Appx. 421); GUTIERREZ-MOLINA *v.* UNITED STATES (230 Fed. Appx. 421); TORRES-ALANIS *v.* UNITED STATES (229 Fed. Appx. 355); and MORENO-GALLEGOS, AKA GUTIERREZ-BUSTAMANTE *v.* UNITED STATES (229 Fed. Appx. 360). C. A. 5th Cir. Certiorari denied.

No. 07–6284. MELO-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 433.

No. 07–6286. MENDOZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 371.

No. 07–6288. MARQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 75.

No. 07–6289. KENT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 411.

No. 07–6293. ESPARZA-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 487.

No. 07–6295. CARDENAS-ALATORRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 485 F. 3d 1111.

No. 07–6296. MIMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 237 Fed. Appx. 634.

No. 07–6300. BARNER *v.* WILLIAMSON, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 229 Fed. Appx. 191.

No. 07–6310. BAKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 928.

No. 07–6311. BYNUM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 334.

No. 07–6314. BERNAL-RUIZ, AKA VALENZUELA, AKA RUIZ BERNAL, AKA BERNAL *v.* UNITED STATES (Reported below: 230 Fed. Appx. 419); BENSU-PINEDA, AKA BENSO-PINEDA *v.* UNITED STATES (230 Fed. Appx. 445); CORONA-CAMPOS, AKA CAMPOS *v.* UNITED STATES (230 Fed. Appx. 410); FERMAN-VELASQUEZ *v.* UNITED STATES (229 Fed. Appx. 354); GARCIA-VALERIO *v.* UNITED STATES (229 Fed. Appx. 358); GONZALEZ-CHAVEZ *v.* UNITED STATES (229 Fed. Appx. 358); GONZALEZ-CONTRERAS *v.* UNITED STATES (229 Fed. Appx. 352); GONZALEZ-LARREA *v.* UNITED STATES (230 Fed. Appx. 446); GONZALEZ-VEGA, AKA VEGA GONZALES *v.* UNITED STATES (230 Fed. Appx. 438); LOPEZ-RICO, AKA VARGAS *v.* UNITED STATES (230 Fed. Appx. 420); LUSIO-FLORES *v.* UNITED STATES (230 Fed. Appx. 415); MENESES-PARRA *v.* UNITED STATES (230 Fed. Appx. 409); MOLINA-CERVANTES *v.* UNITED STATES (229 Fed. Appx. 360); MORENO-JIMENEZ *v.* UNITED STATES (229 Fed. Appx. 353); PEREZ-CALDERON *v.* UNITED STATES (230 Fed. Appx. 442); and RAMOS-PAZ *v.* UNITED STATES (230 Fed. Appx. 410). C. A. 5th Cir. Certiorari denied.

No. 07–6315. BELTRAN-GARCIA, AKA BELTRAN *v.* UNITED STATES (Reported below: 230 Fed. Appx. 425); RANGEL-PEREZ, AKA RANGEL, AKA PEREZ *v.* UNITED STATES (230 Fed. Appx. 424); GARCIA-RAMIREZ *v.* UNITED STATES (230 Fed. Appx. 458); CERVANTEZ-TORRALBA *v.* UNITED STATES (234 Fed. Appx. 277); BARRON-RODRIGUEZ *v.* UNITED STATES (234 Fed. Appx. 299); MADRID-VALADEZ *v.* UNITED STATES (234 Fed. Appx. 292); VASQUEZ-MENDOZA *v.* UNITED STATES (234 Fed. Appx. 298); BARAHONA-LAZO, AKA BARAHONA *v.* UNITED STATES (234 Fed. Appx. 300); GUTIERREZ-OLIVA *v.* UNITED STATES (239 Fed. Appx. 79); MARTINEZ *v.* UNITED STATES (234 Fed. Appx. 279); FARIAS-BARRON *v.* UNITED STATES (235 Fed. Appx. 291); ESPINOZA-MEDRANO, AKA MONTALVO-MEDRANO *v.* UNITED STATES (235 Fed. Appx. 297); GOMEZ-RAMIREZ *v.* UNITED STATES (235 Fed. Appx. 289); RODRIGUEZ-MENDOZA *v.* UNITED STATES (235 Fed. Appx. 294); HERNANDEZ-HERNANDEZ *v.* UNITED STATES (235 Fed. Appx. 310); PEREZ-HERNANDEZ, AKA PEREZ-SANCHEZ *v.* UNITED STATES (235 Fed. Appx. 280); RAMOS-BARAHONA *v.* UNITED STATES (236 Fed. Appx. 141); and GUILLEN-ALVAREZ *v.* UNITED STATES (489 F. 3d 191). C. A. 5th Cir. Certiorari denied.

No. 07–6316. MYTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 224 Fed. Appx. 125.

No. 07–6319. LITTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 860.

No. 07–6321. LUNDY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 484 F. 3d 480.

No. 07–6328. MARTINEZ *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 476 F. 3d 961.

No. 07–6332. ELLIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 503.

No. 07–6336. GARCIA-ZAPATA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 434.

No. 07–6338. LOVE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–6342. RODRIGUEZ-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 423.

No. 07–6343. RHODES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–6344. MARTINEZ-ARRASOLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 283.

No. 07–6348. BRADLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6352. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6354. GOMEZ-VALLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 431.

No. 07–6355. HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–6356. GALBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 307.

No. 07–6357. MUZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 934.

No. 07–6362. RAMOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–6365. SEPULVEDA *v.* SMITH, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 213 Fed. Appx. 125.

No. 07–6366. STOLTENBERG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–6371. DASHER, AKA JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 222.

No. 07–6372. EARLE, AKA ALLEN, AKA WILSON, AKA TIPPET, AKA PREVAL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 488 F. 3d 537.

No. 07–6374. DINGES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 236 Fed. Appx. 756.

No. 07–6375. DEVEREAUX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 424.

No. 07–6376. CASON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6378. MERRILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 493.

No. 07–6379. CAMPUZANO NAVARRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 447.

No. 07–6384. BORUNDA-RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 437.

No. 07–6386. BLOUNT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 235 Fed. Appx. 935.

No. 07–6389. AHIDLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 486 F. 3d 1184.

No. 07–6390. MATERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 3d 115.

No. 07–6391. LICON-NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 448.

No. 07–6394. OTERO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 495 F. 3d 393.

No. 07–6396. GRISEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 3d 844.

No. 07–6397. FLEETWOOD, AKA JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 235 Fed. Appx. 892.

No. 07–6398. GIBBS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–6399. FISHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 225.

No. 07–6400. GRIFFIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 561.

No. 07–6402. PEREZ-FIGUEROA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 554.

No. 07–6403. SADUSEDO-GONSALES, AKA GARCIA-CRUZ *v.* UNITED STATES (Reported below: 230 Fed. Appx. 416); and AGUILAR-AGUILAR *v.* UNITED STATES (229 Fed. Appx. 355). C. A. 5th Cir. Certiorari denied.

No. 07–6404. RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 294.

No. 07–6405. RIVAS-ZUNIGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 422.

No. 07–6409. RODRIGUEZ-CANDERLARIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6411. DORMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 488 F. 3d 936.

No. 07–6412. EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 288.

No. 07–6413. PACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–6415. BERRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–6417. TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 211.

No. 07–6420. UNDERWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 179.

No. 07–6428. OLMOS-ESPARZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 484 F. 3d 1111.

No. 07–6430. MCMILLIAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 131.

No. 07–6431. BRONSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 238 Fed. Appx. 893.

No. 07–6436. WINN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 961.

No. 07–6437. ZAMUDIO-BERGES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 226 Fed. Appx. 56.

No. 07–6443. BLACK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–6444. BURLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 290.

No. 07–6447. HUNTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 938.

No. 07–6448. PRESTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–6449. PARIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 69.

No. 07–6454. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 873.

No. 07–6457. COOPER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–6458. CASTRO-GAXIOLA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 479 F. 3d 579.

No. 07–6459. TERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 950.

No. 07–6469. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–6470. COOPER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 131.

No. 07–6535. HONG *v.* SIMS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 455.

No. 07–239. REALTY EXECUTIVES NEVADA'S CHOICE ET AL. *v.* SWIFT. C. A. 9th Cir. Motion of Nevada Association of Realtors for leave to file a brief as *amicus curiae* granted. Certiorari denied.

Rehearing Denied

No. 06–10752. IN RE HUBER-HAPPY, 551 U. S. 1144. Petition for rehearing denied.

No. 06–10695. LANDEROS *v.* SOLEDAD STATE PRISON, 551 U. S. 1135. Motion for leave to file petition for rehearing denied.

OCTOBER 15, 2007

Certiorari Dismissed

No. 07–5848. SENATOR *v.* SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY, ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–5976. FIELDS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 951 F. 3d 840.

Miscellaneous Orders

No. 07M18. GANGULY *v.* CHARLES SCHWAB & CO. ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 134, Orig. NEW JERSEY *v.* DELAWARE. Exceptions to the Report of the Special Master are set for oral argument in due course. JUSTICE BREYER took no part in the consideration or decision of this case. [For earlier order herein, see, *e. g.*, 551 U. S. 1143.]

No. 06–766. NEW YORK STATE BOARD OF ELECTIONS ET AL. *v.* LOPEZ TORRES ET AL. C. A. 2d Cir. [Certiorari granted, 549

U. S. 1204.] Motion of H. William Van Allen for leave to file a brief as *amicus curiae* out of time denied.

No. 06–1221. SPRINT/UNITED MANAGEMENT CO. *v.* MENDELSOHN. C. A. 10th Cir. [Certiorari granted, 551 U. S. 1113.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–1287. CSX TRANSPORTATION, INC. *v.* GEORGIA STATE BOARD OF EQUALIZATION ET AL. C. A. 11th Cir. [Certiorari granted, 550 U. S. 968.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–6611. IN RE BENNETT;
No. 07–6634. IN RE WEAVER;
No. 07–6640. IN RE SESARIO DEPINEDA; and
No. 07–6648. IN RE LUNA. Petitions for writs of habeas corpus denied.

No. 07–193. IN RE IRONS LLC;
No. 07–340. IN RE CALIFORRNIAA;
No. 07–5830. IN RE GRIFFITH;
No. 07–5896. IN RE ALEX;
No. 07–5932. IN RE GRATTON; and
No. 07–6497. IN RE ROUTIE. Petitions for writs of mandamus denied.

Certiorari Granted

No. 06–1456. REGALADO CUELLAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 478 F. 3d 282.

Certiorari Denied

No. 06–1499. BUSSELL *v.* MOTOROLA, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 832.

No. 06–1652. HARWOOD *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 211 S. W. 3d 696.

No. 06–1667. PHELPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 3d 680.

No. 06–11703. LINDSEY *v.* UNITED STATES;

No. 06–12106. HARNED *v.* UNITED STATES;
No. 07–5007. PERRY *v.* UNITED STATES; and
No. 07–5088. LINDSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 902.

No. 06–11718. FAULKNER *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 06–11775. REID *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 213 S. W. 3d 792.

No. 06–11917. HERNANDEZ *v.* SHEAHAN, SHERIFF, COOK COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 455 F. 3d 772.

No. 06–12015. LOPEZ-MOLINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 06–12130. LINDSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 482 F. 3d 1285.

No. 06–12132. CASABLANCA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 256.

No. 07–88. CITY OF MODESTO, CALIFORNIA, ET AL. *v.* SANCHEZ ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 145 Cal. App. 4th 660, 51 Cal. Rptr. 3d 821.

No. 07–122. JEFFREY A. GRUSENMEYER & ASSOCIATES, INC. *v.* DAVISON, SMITH & CERTO ARCHITECTS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 510.

No. 07–152. WALKER *v.* CENTRE INSURANCE CO. ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 168 Md. App. 492, 897 A. 2d 288.

No. 07–165. LAL *v.* GOSHEN VALLEY ONE (I) & GOSHEN VALLEY TWO (II) CONDOMINIUM ASSN.; and
No. 07–166. LAL *v.* GOSHEN VALLEY ONE (I) & GOSHEN VALLEY TWO (II) CONDOMINIUM ASSN. Commw. Ct. Pa. Certiorari denied. Reported below: 895 A. 2d 98.

No. 07–170. FROMAL *v.* TECHNICAL ADVISORY SERVICE ET AL. Sup. Ct. Va. Certiorari denied.

No. 07–175. AXIBAL *v.* AXIBAL. Ct. App. Ky. Certiorari denied.

No. 07–177. GREEN *v.* BARRETT, SHERIFF, FULTON COUNTY, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 883.

No. 07–178. SOLING *v.* MCCAIN, UNITED STATES SENATOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 563.

No. 07–180. BEVAN *v.* LEE COUNTY SHERIFF'S OFFICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 880.

No. 07–184. KNIGHT *v.* WASHINGTON ET AL. Ct. App. Wash. Certiorari denied. Reported below: 134 Wash. App. 1021.

No. 07–203. TILLIMON ET AL. *v.* PREFERRED PROPERTIES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 538.

No. 07–205. PETERSON *v.* EUROMARK DESIGNS, INC., DBA CRATE AND BARREL. C. A. 7th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 269.

No. 07–209. PO KEE WONG *v.* BOSTON RETIREMENT BOARD. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 448 Mass. 1012, 861 N. E. 2d 420.

No. 07–230. LOCRICCHIO ET AL. *v.* GILL. C. A. 6th Cir. Certiorari denied.

No. 07–234. MAJORS *v.* SOUTH CAROLINA SECURITIES COMMISSION. Sup. Ct. S. C. Certiorari denied. Reported below: 373 S. C. 153, 644 S. E. 2d 710.

No. 07–250. AHOLELEI *v.* HAWAII DEPARTMENT OF PUBLIC SAFETY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 3d 1144.

No. 07–263. BETTWIESER *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 143 Idaho 582, 149 P. 3d 857.

No. 07–273. SPIEGLA *v.* HULL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 481 F. 3d 961.

No. 07–279. S. B. D. *v.* Utah. Ct. App. Utah. Certiorari denied. Reported below: 156 P. 3d 844.

No. 07–289. Brandt et al. *v.* Board of Education of the City of Chicago, Illinois, et al. C. A. 7th Cir. Certiorari denied. Reported below: 480 F. 3d 460.

No. 07–292. Weliver *v.* Board of Appeals, Maryland Department of Labor, Licensing and Regulation, et al. Ct. Sp. App. Md. Certiorari denied.

No. 07–307. Bar-Av *v.* Psychology Examining Board. Ct. App. Wis. Certiorari denied. Reported below: 299 Wis. 2d 387, 728 N. W. 2d 722.

No. 07–314. Patterson *v.* Pennsylvania Office of Inspector General. C. A. 3d Cir. Certiorari denied. Reported below: 243 Fed. Appx. 695.

No. 07–345. Lamb et al. *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied.

No. 07–348. McAulife *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 490 F. 3d 526.

No. 07–356. Sanchez *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 65 M. J. 145.

No. 07–5402. Parker *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 248.

No. 07–5690. Cook *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 4th 1334, 157 P. 3d 950.

No. 07–5819. Carrasco *v.* Adams, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 579.

No. 07–5823. Gonzales *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–5824. Histon *v.* Ayers, Warden. C. A. 9th Cir. Certiorari denied.

No. 07–5825. Henderson *v.* Minnesota. Ct. App. Minn. Certiorari denied.

No. 07–5826. FACKLER *v.* DILLARD. C. A. 6th Cir. Certiorari denied.

No. 07–5828. HALSTEAD *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–5831. HOLSEY *v.* KENTUCKY PAROLE BOARD. C. A. 6th Cir. Certiorari denied.

No. 07–5832. HARRISON *v.* MOTLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 478 F. 3d 750.

No. 07–5833. HOUSTON *v.* SHAMES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 741.

No. 07–5838. MAKAS *v.* ULSTER COUNTY, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–5845. FRANZA *v.* LACLAIR, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–5846. SENATOR *v.* SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY, ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 07–5852. RHOADES *v.* CUYAHOGA METROPOLITAN HOUSING AUTHORITY. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 07–5853. RINGO *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 472 F. 3d 1001.

No. 07–5856. MASON *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–5858. KOETJE *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–5859. LOPEZ *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–5861. BELL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5870. OWENS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5876. SMITH *v.* BOUDREAU ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 366 Ill. App. 3d 958, 852 N. E. 2d 433.

No. 07–5879. DAVIS *v.* BACON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 872.

No. 07–5887. SWECKER ET UX. *v.* MIDLAND POWER COOPERATIVE. Ct. App. Iowa. Certiorari denied. Reported below: 732 N. W. 2d 887.

No. 07–5889. JAMESON *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5895. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 929.

No. 07–5897. ANDERS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5899. ALBERT *v.* QWEST COMMUNICATIONS INTERNATIONAL, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 630.

No. 07–5900. BERRY *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 123 Nev. 793, 210 P. 3d 709.

No. 07–5901. BROWN *v.* WEIDNER ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 113 Ohio St. 3d 1512, 866 N. E. 2d 511.

No. 07–5902. NICHOLAS B. *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–5907. HARRIS *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 710.

No. 07–5908. PRATT *v.* CURRY ET AL.; and
No. 07–5909. PRATT *v.* CURRY ET AL. C. A. 1st Cir. Certiorari denied.

No. 07–5911. WASHINGTON *v.* CORRECTIONS CORPORATION OF AMERICA ET AL. C. A. 10th Cir. Certiorari denied.

No. 07–5920. THOMAS *v.* MAGISTRATE JUDGES. C. A. 9th Cir. Certiorari denied.

No. 07–5921. GLADWELL *v.* SCOFIELD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 750.

No. 07–5923. FRANCIS *v.* CHESAPEAKE APPALACHIA, LLC. Ct. App. Ky. Certiorari denied.

No. 07–5926. TIPPINS *v.* MORTON, WARDEN. Super. Ct. Charlton County, Ga. Certiorari denied.

No. 07–5936. WITMER *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 07–5937. WELLS *v.* A–1 PROPERTY MANAGEMENT. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–5939. DOUGLAS *v.* WASHINGTON MUTUAL BANK. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 07–5940. CHRISTIAN *v.* MECHLING ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–5941. WELLS *v.* HUDSON, WARDEN. Ct. App. Ohio, Geauga County. Certiorari denied.

No. 07–5944. ALBRECHT *v.* HAMILTON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 233 Fed. Appx. 122.

No. 07–5947. COX *v.* WEST VIRGINIA. Cir. Ct. Ohio County, W. Va. Certiorari denied.

No. 07–5954. JAMES *v.* YARBROUGH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 714.

No. 07–5956. LEYDENDECKER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–5959. NEWSON *v.* SCHNEITER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–5965. JORDAN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 485 F. 3d 1351.

No. 07–5982. SMYTH *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 956 So. 2d 466.

No. 07–6001. LEWIS *v.* KANSAS. Ct. App. Kan. Certiorari denied.

No. 07–6019. MAGNOTTI *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 934.

No. 07–6069. KWASNIK *v.* LEBLON, JUDGE, SUPERIOR COURT OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 228 Fed. Appx. 238.

No. 07–6090. MCQUILLEN *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6095. HUGHES *v.* MCMASTER, ATTORNEY GENERAL OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied.

No. 07–6114. SUTTON *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied.

No. 07–6124. EDWARDS-BEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1217, 931 N. E. 2d 365.

No. 07–6151. CARTER *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6165. HUFF *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–6172. FRENCH *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 1st Cir. Certiorari denied.

No. 07–6174. COHEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 574.

No. 07–6176. RIDDLE *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 07–6180. MOORE *v.* SCHUETZLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 07–6195. CHISHOLM *v.* THOMPSON, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 903.

No. 07–6209. SWINSON *v.* CIRCUIT COURT OF WISCONSIN, SHEBOYGAN COUNTY. Sup. Ct. Wis. Certiorari denied.

No. 07–6217. PHILLIPS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 07–6228. SCHMALZ *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 951 So. 2d 836.

No. 07–6258. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 69.

No. 07–6282. CROSS *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 32.

No. 07–6292. KENNARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 472 F. 3d 851.

No. 07–6303. RICHARDS *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 07–6322. WIGFALL *v.* BURTT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 257.

No. 07–6333. CANTRELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 66.

No. 07–6433. SWANSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 483 F. 3d 509.

No. 07–6434. ROUSE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 226 Fed. Appx. 97.

No. 07–6435. SAUCEDA-AVALOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 646.

No. 07–6474. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–6480. ROBERTSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 237.

No. 07–6483. ESTRADA *v.* SANDERS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 543.

No. 07–6487. DEMIK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 3d 644.

No. 07–6489. LAWSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 367.

No. 07–6490. ALLEN *v.* NASH, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 236 Fed. Appx. 779.

No. 07–6494. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 331.

No. 07–6495. BUCKLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 631.

No. 07–6496. ROGERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 541.

No. 07–6500. SNIPES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 996.

No. 07–6501. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 971.

No. 07–6504. GEORGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 392.

No. 07–6505. GONZALEZ-CAMPOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 985.

No. 07–6507. TORRES-BOBADILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 575.

No. 07–6517. HERNANDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 296.

No. 07–6518. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 221.

No. 07–6519. FACEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 251.

No. 07–6520. HAIRSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 286.

No. 07–6529. NUNEZ-MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–6533. FLANNERY *v.* SANDERS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 07–6540. ORTEGA-BALDERAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 105.

No. 07–6542. MUHAMMAD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 402.

No. 07–6549. ASKEW *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 203 Fed. Appx. 414.

No. 07–6550. CROUSE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 217 Fed. Appx. 77.

No. 07–6553. WALLACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6556. PENG YOU ZHONG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–6558. TAYLOR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 07–6559. WATKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–6560. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 425.

No. 07–6565. HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 490 F. 3d 81.

No. 07–6567. HOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 573.

No. 07–6568. DIBBLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 380.

No. 07–6570. COLLINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 399.

No. 07–6571. COLON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–6573. MENG TUAN WANG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 339.

No. 07–6576. BIGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 491 F. 3d 616.

No. 07–6577. A. H. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 630.

No. 07–6580. BOOS *v.* ZUERCHER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–6581. BOUNDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 363.

No. 07–6589. HOSCHOUER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 923.

No. 07–6598. NEFF *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 287.

No. 07–6600. TYRON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6609. ALVARADO-SOTOMAYOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 435.

No. 07–6610. BONTY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–6618. COLLINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 193.

No. 07–6619. DONALDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 913.

No. 07–6620. MEGGIE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1219, 931 N. E. 2d 366.

No. 07–6621. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 493 F. 3d 763.

No. 07–6625. JARVIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 237 Fed. Appx. 636.

No. 07–6626. LARKIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 345.

No. 07–6627. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–6636. VEGA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 30.

No. 07–6641. PADILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–6657. WATTERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 376.

No. 07–6658. NELSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 491 F. 3d 344.

No. 07–6666. MIDGETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 488 F. 3d 288.

No. 06–580. BOARD OF EDUCATION OF THE HYDE PARK CENTRAL SCHOOL DISTRICT *v.* FRANK G. ET UX., PARENTS OF DISABLED STUDENT ANTHONY G. C. A. 2d Cir. Certiorari denied. JUSTICE KENNEDY took no part in the consideration or decision of this petition. Reported below: 459 F. 3d 356.

No. 07–138. MICROSOFT CORP. *v.* ODOM ET AL. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 486 F. 3d 541.

No. 07–267. HILL'S PET NUTRITION, INC. *v.* ISAACS. C. A. 7th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 485 F. 3d 383.

No. 07–5847. SMITH *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 215 Ariz. 221, 159 P. 3d 531.

JUSTICE BREYER, dissenting.

Joe Clarence Smith, petitioner in this case, was first sentenced to death 30 years ago. Due to constitutional error, the Arizona courts in 1979 set this first sentencing aside. Smith was again sentenced to death later that year. Due to ineffective assistance of counsel, the federal courts in 1999 set this second sentencing aside. Smith was again sentenced to death in 2004. He now argues that the Federal Constitution's prohibition against cruel

and unusual punishments forbids his execution more than 30 years after he was initially convicted.

In my view, Smith can reasonably claim that his execution at this late date would be "unusual." I am unaware of other executions that have taken place after so long a delay, particularly when much of the delay at issue seems due to constitutionally defective sentencing proceedings. And whether it is "cruel" to keep an individual for decades on death row or otherwise under threat of imminent execution raises a serious constitutional question. I have elsewhere explained (in cases involving less lengthy delays) why I believe that is so. See *Foster* v. *Florida*, 537 U. S. 990, 991–993 (2002) (opinion dissenting from denial of certiorari); *Knight* v. *Florida*, 528 U. S. 990, 993–999 (1999) (same); *Elledge* v. *Florida*, 525 U. S. 944 (1998) (same); see also *Lackey* v. *Texas*, 514 U. S. 1045 (1995) (STEVENS, J., respecting denial of certiorari).

I would grant the petition for certiorari in this case.

No. 07–6094. HEATH *v.* LOWE'S HOME CENTERS, INC. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

OCTOBER 16, 2007

Miscellaneous Order

No. 07A311. NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. *v.* JONES. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eighth Circuit on October 11, 2007, presented to JUSTICE ALITO, and by him referred to the Court, denied.

JUSTICE SCALIA, dissenting.

I vote to grant the State's application to vacate the stay because in my view the decision of the Eighth Circuit was based on the mistaken premise that our grant of certiorari in *Baze* v. *Rees*, 551 U. S. 1192 (2007), calls for the stay of every execution in which an individual raises an Eighth Amendment challenge to the lethal injection protocol. The grant of certiorari in a single case does not alter the application of normal rules of procedure, including those related to timeliness. In this case, Jones's challenge to the lethal injection protocol, which was brought nine years after his conviction and sentence became final, was dilatory.

OCTOBER 17, 2007

Miscellaneous Order

No. 07A304. EMMETT *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted. The execution of sentence of death is stayed pending final disposition of the appeal by the United States Court of Appeals for the Fourth Circuit or further order of this Court.

OCTOBER 29, 2007

Affirmed for Absence of Quorum

No. 07–6522. SIBLEY *v.* BREYER, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. JUSTICE STEVENS, JUSTICE SCALIA, JUSTICE KENNEDY, JUSTICE SOUTER, JUSTICE THOMAS, JUSTICE GINSBURG, and JUSTICE BREYER took no part in the consideration or decision of this petition. Because of this absence of a quorum, 28 U. S. C. § 1, and since a majority of the qualified Justices are of the opinion that the case cannot be heard and determined at the next Term of Court, the judgment is affirmed under 28 U. S. C. § 2109, which provides that under these circumstances "the court shall enter its order affirming the judgment of the same court from which the case was brought for review with the same effect as upon affirmance by an equally divided court."

Certiorari Granted—Vacated and Remanded

No. 07–5130. IBARRA *v.* UNITED STATES. C. A. 8th Cir. Reported below: 220 Fed. Appx. 454; and

No. 07–5473. HEAVNER *v.* UNITED STATES. C. A. 8th Cir. Reported below: 227 Fed. Appx. 524. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Rita* v. *United States*, 551 U. S. 338 (2007).

Certiorari Dismissed

No. 07–6214. RICHARDSON *v.* CAIN, WARDEN. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–6246. WEST *v.* SCHNEITER, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 485 F. 3d 393.

Miscellaneous Orders

No. 06A1010. MCGRIGGS *v.* MISSISSIPPI. Application for certificate of appealability, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. 07A204. MIEDZIANOWSKI *v.* UNITED STATES. Application for certificate of appealability, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. 07A205. MANN ET AL. *v.* BOATRIGHT ET AL. C. A. 10th Cir. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. 07A206. MANN ET AL. *v.* BOATRIGHT ET AL. C. A. 10th Cir. Application for injunctive relief, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. 07M19. DEBARROS *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 07–414. IN RE VON KAHL ET AL.;
No. 07–6756. IN RE PARIS;
No. 07–6758. IN RE ALPINE;
No. 07–6780. IN RE BEASLEY;
No. 07–6834. IN RE BERRY; and
No. 07–6882. IN RE MEINHARD. Petitions for writs of habeas corpus denied.

No. 07–6804. IN RE TWITTY. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 07–6224. IN RE MORIN; and
No. 07–6752. IN RE SACORA. Petitions for writs of mandamus denied.

No. 07–204. IN RE FODOR. Petition for writ of mandamus denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 07–6031. IN RE MILLER;
No. 07–6132. IN RE WILLIS; and
No. 07–6367. IN RE SIDDIQUE. Petitions for writs of mandamus and/or prohibition denied.

No. 07–6760. IN RE BENNETT. Petition for writ of prohibition denied.

Certiorari Granted

No. 07–214. ALLISON ENGINE CO., INC., ET AL. *v.* UNITED STATES EX REL. SANDERS ET AL. C. A. 6th Cir. Motion of Chamber of Commerce of the United States of America for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 471 F. 3d 610.

No. 07–219. EXXON SHIPPING CO. ET AL. *v.* BAKER ET AL. C. A. 9th Cir. Certiorari granted limited to Questions 1, 2, and 3(1) presented by the petition. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 472 F. 3d 600 and 490 F. 3d 1066.

Certiorari Denied

No. 06–1210. GENERAL ELECTRIC CO. *v.* COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION. Sup. Ct. N. H. Certiorari denied. Reported below: 154 N. H. 457, 914 A. 2d 246.

No. 06–1278. ARMSTRONG *v.* GUCCIONE, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 3d 89.

No. 06–1594. AYES ET AL. *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 3d 104.

No. 06–1675. LAKHANI *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 351.

No. 06–1684. CHILINGIRIAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 06–1720. HURST *v.* TEXAS DEPARTMENT OF ASSISTANCE AND REHABILITATIVE SERVICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 3d 809.

No. 06–10986. DePAZ GARCIA *v.* UNITED STATES; and
No. 06–11034. HERNANDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 331.

No. 06–11614. HUBBARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 3d 341.

No. 06–11726. DINGLE *v.* McDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 480 F. 3d 1092.

No. 06–11811. SOUSER *v.* ROBINSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 163.

No. 06–11972. KOLAHI *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 07–2. JOYCE LIVESTOCK CO. *v.* UNITED STATES (Reported below: 144 Idaho 1, 156 P. 3d 502); and LU RANCHING CO. *v.* UNITED STATES (144 Idaho 89, 156 P. 3d 590). Sup. Ct. Idaho. Certiorari denied.

No. 07–36. SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 3d 750.

No. 07–99. ROBITAILLE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 971 So. 2d 43.

No. 07–103. REBER ET AL. *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 171 P. 3d 406.

No. 07–215. CONTINENTAL ASSURANCE CO. ET AL. *v.* MARTINEZ ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 480 F. 3d 1043.

No. 07–216. ORKIN ET AL. *v.* TAYLOR. C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 3d 734.

No. 07–222. RICHMOND NEWSPAPERS PROFESSIONAL ASSN. *v.* MEDIA GENERAL OPERATIONS, INC., DBA RICHMOND TIMES-DISPATCH, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 144.

No. 07–231. MSA OF MYRTLE BEACH, INC., DBA ADDY'S HARBOR DODGE *v.* SIMPSON. Sup. Ct. S. C. Certiorari denied. Reported below: 373 S. C. 14, 644 S. E. 2d 663.

No. 07–233. CRAWFORD *v.* CITY OF FAIRBURN, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 482 F. 3d 1305.

No. 07–235. DUCHMANN *v.* MURPHY OIL USA, INC. C. A. 5th Cir. Certiorari denied.

No. 07–238. SKIT INTERNATIONAL, LTD. *v.* DAC TECHNOLOGIES OF ARKANSAS, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 487 F. 3d 1154.

No. 07–242. LISTER *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 07–248. WORLD FINANCE CORPORATION OF SOUTH CAROLINA ET AL. *v.* AIKEN (Reported below: 373 S. C. 144, 644 S. E. 2d 705); and WORLD FINANCE CORPORATION OF SOUTH CAROLINA ET AL. *v.* SIMPSON (373 S. C. 178, 644 S. E. 2d 723). Sup. Ct. S. C. Certiorari denied.

No. 07–252. CORRIGAN *v.* KLINE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 740.

No. 07–262. KING *v.* MCMILLAN, SHERIFF, CITY OF ROANOKE, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 242.

No. 07–268. HARVEY ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–269. ADVANCED CELLULAR SYSTEMS ET AL. *v.* PUERTO RICO TELEPHONE CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 483 F. 3d 7.

No. 07–271. BIKKANI *v.* LEE ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 113 Ohio St. 3d 1441, 863 N. E. 2d 658.

No. 07–275. BALDWIN *v.* BLUE CROSS/BLUE SHIELD OF ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 480 F. 3d 1287.

No. 07–287. RADER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 591.

No. 07–295. ALEXANDRE *v.* DUFFY, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 07–299. FUSSELL *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 07–325. PORTO ET VIR, ON BEHALF OF S. C., A MINOR PERSON WITH A DISABILITY *v.* TOWN OF TEWKSBURY, MASSACHUSETTS. C. A. 1st Cir. Certiorari denied. Reported below: 488 F. 3d 67.

No. 07–329. IBARRA *v.* LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 1.

No. 07–339. CONTE ET AL. *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 159 Wash. 2d 797, 154 P. 3d 194.

No. 07–344. BUSSELL ET AL. *v.* REEDY. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. Reported below: 148 Cal. App. 4th 1272, 56 Cal. Rptr. 3d 216.

No. 07–352. WILLIAMS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 195 Fed. Appx. 939.

No. 07–358. BRUCH *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 954 So. 2d 1242.

No. 07–369. SWEENEY *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari denied. Reported below: 233 Fed. Appx. 997.

No. 07–391. PARRISH ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 573.

No. 07–404. HARROW *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 65 M. J. 190.

No. 07–423. NASH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–426. HAMBLEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 130.

No. 07–431. KOHIKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 694.

No. 07–435. FAZIO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 487 F. 3d 646.

No. 07–5075. JONES *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 35 App. Div. 3d 951, 824 N. Y. S. 2d 575.

No. 07–5094. MCLEOD *v.* CRIST, GOVERNOR OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5244. LINK *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 469 F. 3d 1197.

No. 07–5271. HALLCY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 153 P. 3d 66.

No. 07–5272. SMITH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 4th 483, 150 P. 3d 1224.

No. 07–5362. MADDEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 290.

No. 07–5382. HARVEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 484 F. 3d 453.

No. 07–5453. CARABALLO-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 480 F. 3d 62.

No. 07–5472. HALL *v.* DEPARTMENT OF LABOR, ADMINISTRATIVE REVIEW BOARD. C. A. 10th Cir. Certiorari denied. Reported below: 476 F. 3d 847.

No. 07–5482. CHERRY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 959 So. 2d 702.

No. 07–5533. KEENE *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 927 A. 2d 398.

No. 07–5574. FOSTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–5584. BROWN *v.* JACKSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5587. HAIRSTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 905 A. 2d 765.

No. 07–5962. VAN HOUTEN *v.* HIXON ET AL. C. A. 10th Cir. Certiorari denied.

No. 07–5964. THOMPSON *v.* HICKS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 939.

No. 07–5966. LEAL *v.* CARMEL FINANCIAL CORP. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 07–5973. CLUCK *v.* WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–5974. CRAIGHEAD *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–5977. FARMER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–5981. SMITH *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–5986. GARCIA *v.* ANDREWS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 488 F. 3d 370.

No. 07–5988. BLANK *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 955 So. 2d 90.

No. 07–5990. BUSH *v.* KELLY, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 07–5999. PATTERSON *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6002. LANCASTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6005. WILLIAMS *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 260.

No. 07–6012. URDIALES *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 225 Ill. 2d 354, 871 N. E. 2d 669.

No. 07–6018. ORTEGA APRECIADO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6024. BREATHETT *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6025. ROWE *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 293.

No. 07–6026. PALMER *v.* GRANHOLM, GOVERNOR OF MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–6028. PARKER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 283 Ga. App. 714, 642 S. E. 2d 111.

No. 07–6033. MATA *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 273 Neb. 474, 730 N. W. 2d 396.

No. 07–6035. LARA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6038. WINTERS *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 734 N. W. 2d 488.

No. 07–6051. VON STAICH *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 780.

No. 07–6060. CONSIGLIO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–6063. MOCCO *v.* ASHTON, ADMINISTRATOR, BAYSIDE STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6066. WILLIAMS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–6074. BRADLEY *v.* DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 07–6077. ROBISON *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6079. BENFORD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6081. RODRIGUEZ *v.* FERNANDES. App. Ct. Conn. Certiorari denied. Reported below: 100 Conn. App. 703, 919 A. 2d 516.

No. 07–6085. WILLIS *v.* KING, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL FACILITY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–6096. HENDRICKS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 181 N. C. App. 150, 639 S. E. 2d 453.

No. 07–6101. STAHLEY *v.* MALFI, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6102. STEWART *v.* O'TOOLE, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY. Ct. App. Ariz. Certiorari denied.

No. 07–6104. KING *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6105. HOWARD *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–6109. MCCLINTON *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6112. ADKINS *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 707.

No. 07–6115. YAZBECK *v.* KLEIN, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY. Ct. App. Ariz. Certiorari denied.

No. 07–6116. MAHAR *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–6122. KWASNIK *v.* MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES. Sup. Jud. Ct. Me. Certiorari denied.

No. 07–6123. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–6127. CRAWFORD *v.* DAWKINS. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 102.

No. 07–6136. BERALDO *v.* FARWELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6138. BUCKMAN *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 07–6143. TRUSTY *v.* JONES ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 171 Md. App. 745, 752.

No. 07–6144. RANDALL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–6145. REDDEN *v.* CALBONE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 825.

No. 07–6146. SADLER *v.* TILLEY. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 296.

No. 07–6148. QUARLES *v.* KANE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 3d 1154.

No. 07–6150. LOPEZ ORTIZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6156. BADGETT *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 361 N. C. 234, 644 S. E. 2d 206.

No. 07–6158. WILLIAMS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 07–6160. TEQUE *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6162. WILLIAMS *v.* MALFI, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6163. ISRAEL *v.* DONAHUE ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–6164. GAMBA *v.* BOWEN, SECRETARY OF STATE OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 07–6169. MCKENZIE *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied.

No. 07–6171. GIVENS *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 07–6175. DARDEN *v.* MITCHELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 707.

No. 07–6179. WELLS *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6181. MIARS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 371 Ill. App. 3d 1205, 936 N. E. 2d 1228.

No. 07–6182. WELLS *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6183. JACKSON *v.* BROWN. C. A. 11th Cir. Certiorari denied.

No. 07–6188. LENZ *v.* WADE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 490 F. 3d 991.

No. 07–6189. GOINES *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 07–6191. WAGAN *v.* SUPERIOR COURT OF CALIFORNIA, SAN MATEO COUNTY. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–6192. BAUDERS *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6194. PLUMMER *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6197. MINNFEE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6200. MEDRANO-GARCIA, AKA GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 427.

No. 07–6207. ADAMS *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 623.

No. 07–6213. SZAREWICZ *v.* LOCKETT, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG. C. A. 3d Cir. Certiorari denied.

No. 07–6218. ROWL *v.* CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–6219. CRUMP *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6223. DEGIORGIO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 36 App. Div. 3d 1007, 827 N. Y. S. 2d 342.

No. 07–6225. ORILLA-CUERVO *v.* CITY OF UNION CITY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6227. CANNON *v.* COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION TWO. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–6237. SMITH *v.* WASHINGTON SUBURBAN SANITARY COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 263.

No. 07–6242. BAILEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 488 F. 3d 363.

No. 07–6250. WOOD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 158 P. 3d 467.

No. 07–6264. THOMAS *v.* GENERAL MOTORS CORP. ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1225, 931 N. E. 2d 369.

No. 07–6275. LOWERY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 282 Ga. 68, 646 S. E. 2d 67.

No. 07–6285. PHAM *v.* HERNANDEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 754.

No. 07–6287. LUDWIG *v.* STEPIEN. Super. Ct. Pa. Certiorari denied.

No. 07–6291. JONES *v.* BOOK ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6298. PAINTER *v.* WILSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6299. AGRIO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–6306. TERAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 82.

No. 07–6324. WASHINGTON *v.* RUSHTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 307.

No. 07–6326. WILLIAMS *v.* GONDER ET AL. C. A. 8th Cir. Certiorari denied.

No. 07–6340. ANDERSON *v.* SILICKI. Sup. Ct. Del. Certiorari denied. Reported below: 925 A. 2d 503.

No. 07–6358. CHAMPION *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 134 Wash. App. 483, 140 P. 3d 633.

No. 07–6361. POLANCO *v.* CORBETT, ATTORNEY GENERAL OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 07–6385. BICKELL *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 07–6418. VOTTA *v.* COAKLEY. C. A. 1st Cir. Certiorari denied.

No. 07–6426. MARTIN *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 581.

No. 07–6440. ADKINS *v.* WEST VIRGINIA. Cir. Ct. Cabell County, W. Va. Certiorari denied.

No. 07–6445. GENEVIER *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–6450. PONCE *v.* PAYNE, SUPERINTENDENT, MCNEIL ISLAND CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 219.

No. 07–6464. BENTLEY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 489 F. 3d 360.

No. 07–6473. WOLLING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 610.

No. 07–6479. SMITH *v.* JACKSON, CORRECTIONAL ADMINISTRATOR, LANESBORO CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 125.

No. 07–6484. CANADY *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 300 Wis. 2d 460, 730 N. W. 2d 460.

No. 07–6486. CREEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 336.

No. 07–6499. PRATT *v.* BLAISDELL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 07–6508. MATSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 455.

No. 07–6510. PATTERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 878.

No. 07–6514. HENRY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 654 So. 2d 1165.

No. 07–6523. STREET *v.* MCBRIDE, WARDEN. Cir. Ct. Mercer County, W. Va. Certiorari denied.

No. 07–6525. NEWSON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 301 Wis. 2d 747, 731 N. W. 2d 382.

No. 07–6532. REEVES *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 9 So. 3d 582.

No. 07–6546. LOWE *v.* UNITED STATES PENITENTIARY COLEMAN ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6569. ELLISON *v.* MCBRIDE, WARDEN. Cir. Ct. Raleigh County, W. Va. Certiorari denied.

No. 07–6583. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–6587. IBARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 630.

No. 07–6601. WALSH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–6602. ROSSINI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–6603. RUIZ-ESTRADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 645.

No. 07–6623. MCREYNOLDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 484 F. 3d 470.

No. 07–6628. REYES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 236 Fed. Appx. 731.

No. 07–6632. MOFFITT *v.* UNITED STATES; and
No. 07–6665. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 409.

No. 07–6638. DOTSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 897.

No. 07–6649. ARNOLD *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 07–6651. BENNETT *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 07–6661. LIGHTEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–6662. LEEKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 493 F. 3d 143.

No. 07–6664. SANTORO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 647.

No. 07–6667. PRICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 356.

No. 07–6672. TURNAGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 251.

No. 07–6673. SHORT *v.* WEST VIRGINIA. Cir. Ct. Cabell County, W. Va. Certiorari denied.

No. 07–6675. VIVERETTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6689. CLEAVER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 359.

No. 07–6690. EGEJURU *v.* WAGNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6695. RODRIGUEZ *v.* WILLIAMSON, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 238 Fed. Appx. 768.

No. 07–6698. CALDERON-SAMANIEGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 910.

No. 07–6700. KENNEY *v.* BARRON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 494.

No. 07–6711. VILLEGAS-AMARILES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 237 Fed. Appx. 654.

No. 07–6715. CASTANEDA-BALTAZAR *v.* UNITED STATES (Reported below: 239 Fed. Appx. 900); MEDINA-MEDINA *v.* UNITED STATES (235 Fed. Appx. 253); GARCIA-HERNANDEZ, AKA HERNANDEZ, AKA GALACIA, AKA HERNANDEZ-RAMOS, AKA HERNANDEZ-GALACIA, AKA HERNANDEZ-WALKER, AKA LOPEZ *v.* UNITED STATES (235 Fed. Appx. 274); GARCIA-TORRES *v.* UNITED STATES (235 Fed. Appx. 311); ROSALES-GARCIA *v.* UNITED STATES (235 Fed. Appx. 303); MENDOZA-GOMEZ *v.* UNITED STATES (235 Fed. Appx. 309); RODRIGUEZ-LEDEZMA *v.* UNITED STATES (235 Fed. Appx. 310); LUMBRERAS-TREVINO *v.* UNITED STATES (239 Fed. Appx. 914); LOPEZ-ORTIZ *v.* UNITED STATES (239 Fed. Appx. 915); VASQUEZ, AKA LARA-GOMEZ, AKA VASQUEZ-ORTIZ *v.* UNITED STATES (237 Fed. Appx. 918); PEREZ-CASTILLO, AKA CASTILLO-PEREZ *v.* UNITED STATES (235 Fed. Appx. 313); LOPEZ *v.* UNITED STATES (235 Fed. Appx. 292); AGUILAR-CORTEZ, AKA HERNANDEZ, AKA MARTINEZ RODRIGUEZ, AKA RODRIGUEZ *v.* UNITED STATES (234 Fed. Appx. 249); ARCINIEGA-OYERVIDEZ *v.* UNITED STATES (234 Fed. Appx. 289); VEGA-GOMEZ, AKA VEGA *v.* UNITED STATES (243 Fed. Appx. 46); MEJIA-BANDA *v.* UNITED STATES (235 Fed. Appx. 298); CASTRO-ALVARENGA, AKA CASTRO *v.*

UNITED STATES (235 Fed. Appx. 302); LARA-RAMOS, AKA LARA RAMOS, AKA RAMOS *v.* UNITED STATES (235 Fed. Appx. 294); HERNANDEZ-RAMOS, AKA PEREZ-HERNANDEZ *v.* UNITED STATES (235 Fed. Appx. 293); PACHECO-SALAZAR *v.* UNITED STATES (242 Fed. Appx. 974); RESENDEZ-HERNANDEZ *v.* UNITED STATES (234 Fed. Appx. 261); MANCILLA *v.* UNITED STATES (234 Fed. Appx. 259); IBARRA-IBANEZ *v.* UNITED STATES (234 Fed. Appx. 260); and ALCANTARA-HERNANDEZ *v.* UNITED STATES (234 Fed. Appx. 291). C. A. 5th Cir. Certiorari denied.

No. 07–6716. POWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 821.

No. 07–6720. MITSAKOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 915.

No. 07–6721. FLOWERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 836.

No. 07–6723. BOYSAW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 321.

No. 07–6728. HICKERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 3d 742.

No. 07–6730. WASHINGTON *v.* RIOS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6734. SAUNDERS *v.* LACLAIR, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–6738. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 155.

No. 07–6743. DARBONNE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 381.

No. 07–6745. CURRENCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 294.

No. 07–6747. LEVINE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 220 Fed. Appx. 153.

No. 07–6748. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 470 F. 3d 1234.

No. 07–6766. AVILA-NAVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 925.

No. 07–6770. VELASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–6772. WILLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6773. OLIVER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–6775. WILLIAMSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 255.

No. 07–6784. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 795.

No. 07–6788. GODFREY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–6790. GIBBS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 550.

No. 07–6791. HOWARD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 3d 484.

No. 07–6795. CARDONA HENAO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 360.

No. 07–6798. GALINDO-VELASQUEZ *v.* UNITED STATES (Reported below: 229 Fed. Appx. 417); ZAMORANO-BENITEZ *v.* UNITED STATES (235 Fed. Appx. 249); VIGIL-SANCHEZ, AKA SANCHEZ-VIGIL *v.* UNITED STATES (246 Fed. Appx. 854); and MACIEL-PEDILLA, AKA MACIEL, AKA MACIEL-PADILLA *v.* UNITED STATES (239 Fed. Appx. 93). C. A. 5th Cir. Certiorari denied.

No. 07–6810. PHILLIPS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 928 A. 2d 730.

No. 07–6811. MSUGAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 929.

No. 07–6816. ELLIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–6820. VILLANUEVA-CORTEZ, AKA MARTINEZ-TORRES *v.* UNITED STATES (Reported below: 234 Fed. Appx. 263); TOVAR-MARTINEZ *v.* UNITED STATES (234 Fed. Appx. 260); FLORES-MERAS *v.* UNITED STATES (234 Fed. Appx. 307); FORBES *v.* UNITED STATES (235 Fed. Appx. 292); SOLOME-SERVIN, AKA HERNANDEZ-ROVIO *v.* UNITED STATES (239 Fed. Appx. 916); GRANADO-VALDEZ *v.* UNITED STATES (234 Fed. Appx. 263); BAUTISTA-AGUIRRE *v.* UNITED STATES; and PEREZ-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–6821. EIZEMBER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 485 F. 3d 400.

No. 07–6823. CERON-ESCOBAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 339.

No. 07–6825. PEROTTI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 516.

No. 07–6828. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 942.

No. 07–6836. WARE *v.* PEARSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6837. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–6840. CAICEDO VARGAS *v.* JOHNS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–6870. RUIZ-CHAIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 493 F. 3d 1089.

No. 07–6877. WATKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6879. PRITCHETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6880. SINGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 494 F. 3d 653.

No. 07–6884. THORNTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 238.

No. 06–1632. JTEKT CORP., FKA KOYO SEIKO CO., LTD., ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Motion of the Government of Japan for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 210 Fed. Appx. 992.

No. 07–225. LOUISIANA *v.* LANGLEY. Sup. Ct. La. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 958 So. 2d 1160.

No. 07–276. BAKER ET AL. *v.* EXXON SHIPPING CO. ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 490 F. 3d 1066.

No. 07–305. SANDERS ET AL. *v.* CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 226 Fed. Appx. 687.

No. 07–5404. MEDINA-ALVARADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 221 Fed. Appx. 572.

No. 07–6463. BOYD *v.* UNITED STATES MARSHALS SERVICE ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 475 F. 3d 381.

No. 07–7275 (07A334). BERRY *v.* MISSISSIPPI. Sup. Ct. Miss. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. The judgment of the Mississippi Supreme Court relies upon an adequate and independent state ground that deprives this Court of jurisdiction.

OCTOBER 30, 2007

Miscellaneous Order

No. 07–7348 (07A367). BERRY *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, granted pending the disposition of the petition for writ of certiorari. Should

the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court. JUSTICE SCALIA and JUSTICE ALITO would deny the application for stay of execution.

NOVEMBER 5, 2007

Certiorari Granted—Reversed and Remanded. (See No. 06–1680, *ante*, p. 3.)

Miscellaneous Orders

No. 07–7008. IN RE BLANKS;
No. 07–7016. IN RE TOWNZEN;
No. 07–7026. IN RE UNDERWOOD;
No. 07–7108. IN RE BEDFORD;
No. 07–7111. IN RE BURRELL; and
No. 07–7117. IN RE DAVIS. Petitions for writs of habeas corpus denied.

No. 07–6846. IN RE ATAMIAN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. JUSTICE ALITO took no part in the consideration or decision of this petition.

Certiorari Granted

No. 07–110. ARAVE, WARDEN *v.* HOFFMAN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. In addition to the questions presented by the petition, the parties are directed to brief and argue the following question: "What, if any, remedy should be provided for ineffective assistance of counsel during plea bargaining negotiations if the defendant was later convicted and sentenced pursuant to a fair trial?" Reported below: 455 F. 3d 926.

Certiorari Denied

No. 06–9690. INGRAM *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 280 Ga. App. 467, 634 S. E. 2d 430.

No. 06–11794. LUONG *v.* UNITED STATES;
No. 06–11799. HOANG AI LE *v.* UNITED STATES; and
No. 07–5522. CHAN ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 471 F. 3d 1107 and 215 Fed. Appx. 639.

No. 06–11873. MOONEYHAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 3d 280.

No. 06–11884. BROWN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 06–11975. EDWARDS *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 3d 1121.

No. 07–14. WADE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 920.

No. 07–62. VAN TRAN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 07–132. 2025 EMERY HIGHWAY, L. L. C., DBA CLUB EXOTICA *v.* BIBB COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 869.

No. 07–281. KANE *v.* U-HAUL INTERNATIONAL, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 218 Fed. Appx. 163.

No. 07–282. SADLER *v.* ILLINOIS COMMERCE COMMISSION ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 371 Ill. App. 3d 1215, 936 N. E. 2d 1232.

No. 07–293. ZACHERY *v.* WALKER, WARDEN. Super. Ct. Macon County, Ga. Certiorari denied.

No. 07–306. CAVINS ET AL. *v.* NATIONAL UNION FIRE INSURANCE CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 895.

No. 07–328. HAYNES *v.* CITY OF CIRCLEVILLE, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 3d 357.

No. 07–365. PLUMMER *v.* PEARLMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 734.

No. 07–387. VOGEL *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 148 Cal. App. 4th 131, 55 Cal. Rptr. 3d 403.

No. 07–410. PITTMAN *v.* DOLTON POLICE DEPARTMENT ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–419. RODRIGUEZ *v.* VIRGINIA STATE BAR. Sup. Ct. Va. Certiorari denied.

No. 07–425. BROWN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 182 N. C. App. 115, 646 S. E. 2d 775.

No. 07–429. KEFALOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–430. LATHA RESTAURANT CORP. *v.* TOWER INSURANCE CO. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 38 App. Div. 3d 321, 831 N. Y. S. 2d 411.

No. 07–432. KIRKLAND *v.* TAMPLIN ET AL. Ct. App. Ga. Certiorari denied. Reported below: 283 Ga. App. 596, 642 S. E. 2d 125.

No. 07–443. KROUNER *v.* UNITED STATES TAX COURT. C. A. D. C. Cir. Certiorari denied. Reported below: 202 Fed. Appx. 470.

No. 07–454. ELLIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 146.

No. 07–457. JONG HI BEK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 493 F. 3d 790.

No. 07–473. WEILBURG *v.* SIMS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–476. THALER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 229 Fed. Appx. 7.

No. 07–483. LOCASCIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 473 F. 3d 493.

No. 07–5421. HENDRICKSON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 07–5687. CAREY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 109, 158 P. 3d 743.

No. 07–5707. JUDGE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 591 Pa. 126, 916 A. 2d 511.

No. 07–5714. BELTRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 3d 1026.

No. 07–5924. JIMINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 962.

No. 07–6170. MOUNTFORD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–6229. ROPER *v.* JO-ANN STORES, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 211 Fed. Appx. 950.

No. 07–6232. COX *v.* MENDOZA-POWERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6236. EZEKOYE *v.* OCWEN LOAN SERVICING, LLC. Super. Ct. Pa. Certiorari denied. Reported below: 909 A. 2d 891.

No. 07–6240. BELL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 965 So. 2d 48.

No. 07–6249. WILSON *v.* BORDELON ET AL. Sup. Ct. La. Certiorari denied. Reported below: 958 So. 2d 1193.

No. 07–6251. WARFIELD *v.* WEBER, WARDEN. Sup. Ct. S. D. Certiorari denied.

No. 07–6256. RANDANT *v.* WEST VIRGINIA BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES. Cir. Ct. Lincoln County, W. Va. Certiorari denied.

No. 07–6259. WARFIELD *v.* SUPREME COURT OF SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied.

No. 07–6266. AL-AMIN *v.* ALLEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 346.

No. 07–6268. ALLEN *v.* SEWER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 199.

No. 07–6271. WILCHER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 958 So. 2d 943.

No. 07–6272. YATES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 07–6276. RICHARD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–6278. CROCKETT *v.* CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–6281. DRAUGHN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 950 So. 2d 583.

No. 07–6283. REEVES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 957 So. 2d 625.

No. 07–6301. LOREN *v.* COMMITTEE ON CHARACTER AND FITNESS, APPELLATE DIVISION, SUPREME COURT OF NEW YORK, FIRST JUDICIAL DEPARTMENT. Ct. App. N. Y. Certiorari denied. Reported below: 8 N. Y. 3d 937, 866 N. E. 2d 451.

No. 07–6302. LOREN *v.* KAYE, INDIVIDUALLY AND AS CHIEF JUDGE OF THE COURT OF APPEALS OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–6304. SNEED *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 209 S. W. 3d 782.

No. 07–6307. TILLERY *v.* WASHINGTON POST ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 232 Fed. Appx. 1.

No. 07–6308. WAKEFIELD *v.* SEARS, ROEBUCK & CO. ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6312. ALLEN *v.* MARSTILLAR, ASSISTANT ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 07–6325. YONGPING ZHOU *v.* SCOTT D. POLLOCK ASSOCIATES, P. C. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 07–6360. DUDLEY *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6416. BUTLER *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6425. LEONARD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 4th 1370, 157 P. 3d 973.

No. 07–6452. EZEKOYE *v.* OCWEN LOAN SERVICING, LLC. Super. Ct. Pa. Certiorari denied. Reported below: 909 A. 2d 891.

No. 07–6482. TREADAWAY *v.* HENDERSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–6498. MCNAMARA *v.* ROCKLAND COUNTY POLICE CHIEFS' ASSN. ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 8 N. Y. 3d 875, 864 N. E. 2d 615.

No. 07–6502. RUSHING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 322.

No. 07–6516. HEARY *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6521. RHONE *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 957 So. 2d 1018.

No. 07–6524. ROPER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 9 So. 3d 583.

No. 07–6543. KIMANI *v.* KEISLER, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 569.

No. 07–6562. SMITH *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 215.

No. 07–6563. SIMMONS *v.* DISTRICT ATTORNEY OF LANCASTER COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6572. COUSAR *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 07–6585. COOPER *v.* HUMPHREY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–6590. IRWIN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 486.

No. 07–6593. SAMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 503.

No. 07–6595. CRUZ *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 127.

No. 07–6622. VILLAREAL *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–6629. SWINEY *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6637. CHILTON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–6647. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 306.

No. 07–6653. TURNER *v.* HANEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6654. TERRY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–6660. KINGSOLVER *v.* RAY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 476.

No. 07–6663. MALDONADO-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 398.

No. 07–6674. THOMPSON *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6704. MORALES *v.* MARQUES. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 965 So. 2d 149.

No. 07–6722. ARTIS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 181 N. C. App. 601, 641 S. E. 2d 314.

No. 07–6731. LaPointe *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 225 S. W. 3d 513.

No. 07–6744. Crayton *v.* Martinez et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–6750. Ellis et al. *v.* Brown et al. C. A. 10th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 327.

No. 07–6754. Crump *v.* North Carolina. Ct. App. N. C. Certiorari denied. Reported below: 181 N. C. App. 150, 639 S. E. 2d 453.

No. 07–6767. Blalock *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 07–6771. White *v.* Weber, Warden. Sup. Ct. S. D. Certiorari denied. Reported below: 734 N. W. 2d 825.

No. 07–6787. Gomez-Mendez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 486 F. 3d 599.

No. 07–6792. Gonzalez-Ponce *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 572.

No. 07–6793. Hale *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 506.

No. 07–6797. Gunton *v.* Commissioner of Internal Revenue. C. A. 2d Cir. Certiorari denied.

No. 07–6800. Cox *v.* Georgia. Sup. Ct. Ga. Certiorari denied.

No. 07–6803. Dagnall *v.* Kingston, Warden. C. A. 7th Cir. Certiorari denied.

No. 07–6808. Young *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 123 Nev. 873, 210 P. 3d 781.

No. 07–6817. Walker *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 07–6826. Castaneda *v.* United States. C. A. 10th Cir. Certiorari denied.

No. 07–6830. Contreras Palacios *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 492 F. 3d 39.

No. 07–6831. OLMOS-HUERTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 628.

No. 07–6843. KNIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 490 F. 3d 1268.

No. 07–6845. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 623.

No. 07–6849. BERNANDINO-MEJIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 373.

No. 07–6853. MOODY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 858.

No. 07–6859. ROJAS *v.* UNITED STATES (Reported below: 234 Fed. Appx. 295); JAIME *v.* UNITED STATES (239 Fed. Appx. 914); HARPER *v.* UNITED STATES (239 Fed. Appx. 904); BROWN *v.* UNITED STATES (234 Fed. Appx. 264); and MORENO SANCHEZ *v.* UNITED STATES (241 Fed. Appx. 195). C. A. 5th Cir. Certiorari denied.

No. 07–6860. SWEETS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 526 F. 3d 122.

No. 07–6861. RAMIREZ-VILLALBA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–6867. ALONZO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 282.

No. 07–6871. MUHAMMAD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 751.

No. 07–6883. MEYERS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 371 Ill. App. 3d 1225, 936 N. E. 2d 1237.

No. 07–6886. MUTCH *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 262 Fed. Appx. 264.

No. 07–6887. MOORE *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–6890. DICKERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 864.

No. 07–6891. CAMPBELL ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 787.

No. 07–6892. MACIAS-CRUZ *v.* UNITED STATES (Reported below: 236 Fed. Appx. 131); VILLARREAL-GUERRERO *v.* UNITED STATES (235 Fed. Appx. 318); PEREZ-BUSTOS *v.* UNITED STATES (234 Fed. Appx. 283); ORTEGA-ESPINOZA *v.* UNITED STATES (235 Fed. Appx. 282); PEREZ-CANEDO *v.* UNITED STATES (235 Fed. Appx. 281); BELMONTES-CASTRO *v.* UNITED STATES (236 Fed. Appx. 159); GONZALEZ-CANTU *v.* UNITED STATES (234 Fed. Appx. 296); ALFARO-REYEZ *v.* UNITED STATES (239 Fed. Appx. 905); RAMIEREZ-JUAREZ *v.* UNITED STATES (235 Fed. Appx. 261); MONDRAGON-DIAZ *v.* UNITED STATES (236 Fed. Appx. 146); CARDONA-BLANCO *v.* UNITED STATES (235 Fed. Appx. 279); GONZALEZ-GONZALEZ *v.* UNITED STATES (235 Fed. Appx. 345); GARCIA-SANCHEZ *v.* UNITED STATES (234 Fed. Appx. 251); BLANCO-SALINAS *v.* UNITED STATES (234 Fed. Appx. 297); GONZALEZ-BARREIRO *v.* UNITED STATES (240 Fed. Appx. 650); RODRIGUEZ *v.* UNITED STATES (235 Fed. Appx. 986); and NAZARALLY *v.* UNITED STATES (236 Fed. Appx. 130). C. A. 5th Cir. Certiorari denied.

No. 07–6893. MORRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–6904. CABALLOS-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 292.

No. 07–6914. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 925.

No. 07–6916. KELLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 60.

No. 07–6922. GREENIDGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 495 F. 3d 85.

No. 07–6925. HINOJOSA-NOYOLA *v.* UNITED STATES (Reported below: 234 Fed. Appx. 278); RODRIGUEZ-RAMIREZ *v.* UNITED STATES (234 Fed. Appx. 294); SUSTAITA-SAENZ *v.* UNITED STATES (234 Fed. Appx. 282); LOPEZ-SALAZAR *v.* UNITED STATES (235 Fed. Appx. 304); JARAMILLO-ESTRADA *v.* UNITED STATES (235 Fed. Appx. 330); DOMINGUEZ-HERNANDEZ *v.* UNITED STATES (237 Fed. Appx. 995); CORTEZ-ESCOBAR *v.* UNITED STATES (239 Fed.

Appx. 912); RODRIGUEZ-VARGAS *v.* UNITED STATES (239 Fed. Appx. 915); MORENO *v.* UNITED STATES (239 Fed. Appx. 917); MORA-PEREZ *v.* UNITED STATES (239 Fed. Appx. 906); and MATA-ORTIZ *v.* UNITED STATES (242 Fed. Appx. 253). C. A. 5th Cir. Certiorari denied.

No. 07–6927. GOWANLOCK *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 64 M. J. 435.

No. 07–6929. GONZALEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 350.

No. 07–6931. GONZALEZ-GALLEGOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 671.

No. 07–6934. DENKLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 336.

No. 07–6936. CANI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 938.

No. 07–6938. SHEPHERD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 160.

No. 07–6941. MCKERRELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 491 F. 3d 1221.

No. 07–6948. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 45.

No. 07–6949. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 699.

No. 07–6953. SANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 372.

No. 07–6954. RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 348.

No. 07–6956. BENNETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 935.

No. 07–6962. WELCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 944.

No. 07–6965. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 920.

No. 07–6969. McARTHUR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 832.

No. 07–6977. WIGGINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 594.

No. 07–6991. GENERAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 808.

No. 07–7000. AKINS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 371 Ill. App. 3d 1199, 936 N. E. 2d 1225.

No. 07–7021. HALPIN *v.* McDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–324. McKEEVER *v.* DiGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 486 F. 3d 81.

No. 07–417. ROSS ET UX. *v.* BROADWAY TOWERS, INC. Ct. App. Tenn. Motion of Housing Law Clinic Consortium for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 228 S. W. 3d 113.

No. 07–6947. PELULLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

Rehearing Denied

No. 07–5119. IN RE AWALA, *ante*, p. 809; and

No. 07–5916. IN RE DeMARSH, *ante*, p. 807. Petitions for rehearing denied.

No. 06–10205. FRANCIS *v.* UNITED STATES, 551 U. S. 1172. Motion for leave to file petition for rehearing denied.

NOVEMBER 9, 2007

Dismissal Under Rule 46

No. 07–296. DREW *v.* McMILLAN. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 211 Fed. Appx. 821.

Miscellaneous Orders

No. 06–179. RIEGEL, INDIVIDUALLY AND AS THE ADMINISTRATOR OF THE ESTATE OF RIEGEL *v.* MEDTRONIC, INC. C. A. 2d Cir. [Certiorari granted, 551 U. S. 1144.] Motion of New York et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–457. ROWE, ATTORNEY GENERAL OF MAINE *v.* NEW HAMPSHIRE MOTOR TRANSPORT ASSN. ET AL. C. A. 1st Cir. [Certiorari granted, 551 U. S. 1144.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

NOVEMBER 13, 2007

Miscellaneous Orders

No. 07M20. KLEPSKY *v.* UNITED PARCEL SERVICE, INC. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 06–1181. DADA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 5th Cir. [Certiorari granted *sub nom. Dada* v. *Keisler*, 551 U. S. 1188.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 06–1195. BOUMEDIENE ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL.; and

No. 06–1196. AL ODAH, NEXT FRIEND OF AL ODAH, ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. [Certiorari granted, 551 U. S. 1160.] Motion of American Center for Law and Justice for leave to file a brief as *amicus curiae* granted.

No. 07–81. EXXON MOBIL CORP. ET AL. *v.* DOE ET AL. C. A. D. C. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 07–6534. GLENN *v.* BATTS. Ct. App. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 4, 2007, within which to pay the

docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 07–7185. IN RE STEPHENSON;
No. 07–7203. IN RE MORGAN; and
No. 07–7222. IN RE ROBERSON. Petitions for writs of habeas corpus denied.

No. 07–6334. IN RE CANTRELL. Petition for writ of mandamus denied.

Certiorari Granted

No. 06–1717. RICHLIN SECURITY SERVICE CO. *v.* CHERTOFF, SECRETARY OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari granted. Reported below: 472 F. 3d 1370.

Certiorari Denied

No. 06–10994. HOWARD *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 949 So. 2d 203.

No. 06–11121. JACKSON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 950 So. 2d 1251.

No. 06–11721. MCPHEE *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 823 So. 2d 160.

No. 06–11723. JONES *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 838 So. 2d 685.

No. 06–11725. CIFUENTES *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 816 So. 2d 804.

No. 06–11728. SCOTT *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 813 So. 2d 1025.

No. 06–11854. GARCIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 224 Fed. Appx. 139.

No. 07–12. TEJEDA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 481 F. 3d 44.

No. 07–79. BARAKA *v.* MCGREEVEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 481 F. 3d 187.

No. 07–92. THOMPKINS *v.* LIL' JOE RECORDS, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 476 F. 3d 1294.

No. 07–107. NATIONAL COLLEGIATE ATHLETIC ASSN. ET AL. *v.* COHANE. C. A. 2d Cir. Certiorari denied. Reported below: 215 Fed. Appx. 13.

No. 07–147. EDGE PETROLEUM OPERATING CO., INC. *v.* DUKE ENERGY TRADING & MARKETING LLC. C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 3d 292.

No. 07–186. CROSS MEDICAL PRODUCTS, INC. *v.* MEDTRONIC SOFAMOR DANEK, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 480 F. 3d 1335.

No. 07–304. STRYKER CORP. ET AL. *v.* ACUMED LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 483 F. 3d 800.

No. 07–315. PODS, INC. *v.* PORTA STOR, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 484 F. 3d 1359.

No. 07–322. WEGELIN *v.* SCHMEHL ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 592 Pa. 581, 927 A. 2d 183.

No. 07–326. MINNICH *v.* ESTATE OF MINNICH, DECEASED, ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 913 A. 2d 951.

No. 07–331. SUN LIFE ASSURANCE COMPANY OF CANADA *v.* WHITE. C. A. 4th Cir. Certiorari denied. Reported below: 488 F. 3d 240.

No. 07–332. ROCKEFELLER *v.* BINGAMAN, UNITED STATES SENATOR, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 852.

No. 07–334. STEELE ET AL. *v.* BELTRAMI COUNTY, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 180.

No. 07–368. COOSEMANS SPECIALTIES, INC. *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 482 F. 3d 560.

No. 07–370. TALUKDER *v.* MUKASEY, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 927.

No. 07–374. DAVE *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 220 S. W. 3d 154.

No. 07–382. RIVERSIDE CEMENT CO. *v.* PAPER, ALLIED-INDUSTRIAL CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION, LOCAL 8–192, AFL–CIO. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 116.

No. 07–409. UNITED STATES EX REL. MAYFIELD *v.* LOCKHEED MARTIN ENGINEERING & SCIENCE SERVICES CO. C. A. 5th Cir. Certiorari denied. Reported below: 491 F. 3d 254.

No. 07–496. HECKENKAMP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 3d 1142.

No. 07–497. HULL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 809.

No. 07–5156. CAGE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 4th 965, 155 P. 3d 205.

No. 07–5214. BLACK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 3d 1035.

No. 07–5477. GONZALEZ MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 293.

No. 07–5736. PERDUE *v.* LOVELACE ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–5741. MATTHEWS *v.* ISHEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 3d 883.

No. 07–5820. CHAMBERLAIN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 21.

No. 07–5871. RAND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 482 F. 3d 943.

No. 07–5891. NELSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 484 F. 3d 257.

No. 07–6011. VAN HOOK *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 488 F. 3d 411.

No. 07–6128. R. L. C. *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 361 N. C. 287, 643 S. E. 2d 920.

No. 07–6317. POTTS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6318. PARKER *v.* MISSOURI DEPARTMENT OF MENTAL HEALTH ET AL. C. A. 8th Cir. Certiorari denied.

No. 07–6320. MARLIN *v.* MARQUEZ ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 545.

No. 07–6327. VON STAICH *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 780.

No. 07–6329. MARTIN *v.* SUBIA, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6330. DORSEY *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–6331. CAMPOS *v.* NAPOLI, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–6335. TERRY *v.* RICCI, ASSOCIATE ADMINISTRATOR, NEW JERSEY STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 07–6337. MARTINEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–6339. ARINWINE *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6341. BELL *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–6345. STURGIS ET AL. *v.* MICHIGAN DEPARTMENT OF HUMAN SERVICES. Ct. App. Mich. Certiorari denied.

No. 07–6347. BUTLER *v.* MASON. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 07–6349. BRANDON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–6359. CHAMPION *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 133 Wash. App. 1036.

No. 07–6363. SOTO *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6364. ROBBINS *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6368. DALLUGE *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 07–6370. HUDSON *v.* PINNACLE TELESERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 340.

No. 07–6373. CHILDERS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 373 S. C. 367, 645 S. E. 2d 233.

No. 07–6382. METTS *v.* TEXAS; and
No. 07–6383. METTS *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 07–6406. SCHWEITZER *v.* OHIO. Ct. App. Ohio, Auglaize County. Certiorari denied.

No. 07–6408. HERNANDEZ *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 284 Kan. 74, 159 P. 3d 950.

No. 07–6414. AREF *v.* HICKMAN ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6419. THOMAS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 370 Ark. 70, 257 S. W. 3d 92.

No. 07–6421. AGUILAR *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6422. ARMSTRONG *v.* EASLEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 120.

No. 07–6423. WHITE *v.* OCKEY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 462.

No. 07–6427. PURCARO *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–6438. THOMAS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6442. BELCHER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 961 So. 2d 239.

No. 07–6451. WATSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 369 Ill. App. 3d 1063, 932 N. E. 2d 1227.

No. 07–6453. COLEMAN *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 07–6455. DURMER *v.* ROGERS, ADMINISTRATOR, ADULT DIAGNOSTIC AND TREATMENT CENTER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6456. DOWNS *v.* HENRICO COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 199.

No. 07–6460. SILER *v.* DILLINGHAM SHIP REPAIR ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6462. WOODS *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–6465. BINDER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6466. AUBERT *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–6467. ALEXANDER *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6468. WILLIAMS *v.* OWENS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 480.

No. 07–6471. COOPER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6472. PARHAM *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY. C. A. 3d Cir. Certiorari denied.

No. 07–6475. SUMMERVILLE *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 07–6476. ROBEY *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 22 So. 3d 534.

No. 07–6477. ROBERTSON *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 267.

No. 07–6481. SCHREMP *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6485. CARSON *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 890.

No. 07–6488. MCROY *v.* SHEAHAN, SHERIFF, COOK COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 205 Fed. Appx. 462.

No. 07–6492. ALEXANDER *v.* SPARTENBURG PUBLIC SAFETY DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 344.

No. 07–6493. BREWSTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6509. OBOJES *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 946 So. 2d 602.

No. 07–6511. HERNANDEZ *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 07–6512. BRANCH *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6515. HARRISON *v.* HAWS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 653.

No. 07–6526. HOLUB *v.* NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 07–6527. HARRIS *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET. C. A. 3d Cir. Certiorari denied.

No. 07–6528. MCCRAY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–6530. FAIRCLOTH *v.* LEE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 317.

No. 07–6531. HARVEY *v.* PLAINS TOWNSHIP POLICE DEPARTMENT ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6536. GORE *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6537. JONES ET AL. *v.* LOS ANGELES COUNTY EMPLOYEE RETIREMENT ASSN. ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6539. AYALA *v.* SAN FRANCISCO STATE UNIVERSITY. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–6545. BENGE *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 3d 236.

No. 07–6547. JAMESON *v.* RIMMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 652.

No. 07–6548. BLUITT *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–6551. DRUERY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 225 S. W. 3d 491.

No. 07–6552. WHITTEN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–6554. WOODY *v.* AYRES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6555. WARNER *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 07–6557. LEWIS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 962 So. 2d 907.

No. 07–6642. VALDEZ-BAUTISTA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 07–6644. JIMENEZ *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 481 F. 3d 1337.

No. 07–6669. MUHAMMAD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 265.

No. 07–6677. VASQUEZ VALLEJO *v.* MUKASEY, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 07–6679. RHUE *v.* CARROLL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 214.

No. 07–6694. SCHNELLER *v.* MAIN LINE HOSPITALS, INC., ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 919 A. 2d 984.

No. 07–6702. ALAMEDA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 235 S. W. 3d 218.

No. 07–6709. YISRAEL, AKA JOLLY *v.* YISRAEL, AKA JOLLY. Ct. App. Kan. Certiorari denied.

No. 07–6718. SCOTT *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 959 So. 2d 274.

No. 07–6753. SCOTT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 367 Ill. App. 3d 1094, 929 N. E. 2d 169.

No. 07–6779. ASHBY *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 927 A. 2d 1172.

No. 07–6781. BEATTIE *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6783. AMESQUITA *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 07–6785. HANCOCK *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 155 P. 3d 796.

No. 07–6801. CLARK *v.* WALLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 490 F. 3d 551.

No. 07–6847. BRILL *v.* SHERMAN LAW OFFICES CHARTERED (two judgments). C. A. 11th Cir. Certiorari denied.

No. 07–6864. BLACKMAN *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–6889. ORTIZ *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 41 App. Div. 3d 276, 836 N. Y. S. 2d 877.

No. 07–6907. HARRIS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 07–6908. HAMEED *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 197 Fed. Appx. 913.

No. 07–6957. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 318.

No. 07–6961. MERCER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 932.

No. 07–6973. KHMYZNIKOV *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–6978. GEORGE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 198 Fed. Appx. 552.

No. 07–6980. PAYNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 864.

No. 07–6982. MCGRUDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–6995. SHULL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 367.

No. 07–6999. MYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 934.

No. 07–7001. DAWKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 598.

No. 07–7004. HINTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 237.

No. 07–7005. HICKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7011. ATKINSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–7013. TAFOLLA BUENROSTRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 352.

No. 07–7014. BRILLHART *v.* JOHNS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 978.

No. 07–7019. MONCIVAIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 492 F. 3d 652.

No. 07–7024. GRIFFIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7027. ESQUIVEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 319.

No. 07–7029. BAEZA CARRASCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 283.

No. 07–7030. DIAZ-CASTANEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 494 F. 3d 1146.

No. 07–7034. WALKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–7035. VINASCO *v.* ZENK, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 878.

No. 07–7038. OLTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–7039. PATTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7045. RAMOS-CANSINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 256.

No. 07–7046. SINGLETON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 313.

No. 07–7048. SOTO-RIVAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 266.

No. 07–7056. JORDAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 485 F. 3d 1214.

No. 07–7061. VALENZUELA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 494 F. 3d 886.

No. 07–7062. WALLACE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 87.

No. 07–7102. ROMAN-ROMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 765.

No. 07–7105. QUIROZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–7112. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–7118. CRANE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 782.

No. 07–7119. NARVAEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–7120. GOMEZ-ACEVEDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 691.

No. 07–7121. GARNETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 527.

No. 07–7123. GUZMAN-MAJANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 273.

No. 07–7124. BARRAZA-CARDENAS *v.* UNITED STATES (Reported below: 234 Fed. Appx. 279); CARACELO-ESCALANTE *v.* UNITED STATES (234 Fed. Appx. 281); DOMINGUEZ-FUENTES *v.* UNITED STATES (234 Fed. Appx. 270); and LOPEZ-CUEVAS, AKA MONTERO-JARAS *v.* UNITED STATES (234 Fed. Appx. 289). C. A. 5th Cir. Certiorari denied.

No. 07–7125. ALAMILLA-CARBOJAL *v.* UNITED STATES (Reported below: 234 Fed. Appx. 271); BENITEZ-IBARRA *v.* UNITED STATES (234 Fed. Appx. 268); CHUQUI-MARCA *v.* UNITED STATES (234 Fed. Appx. 281); CONTRERAS-GARCES *v.* UNITED STATES (234

Fed. Appx. 302); DELGADO-MEDINA *v.* UNITED STATES (234 Fed. Appx. 275); ESQUIVEL-JUAREZ *v.* UNITED STATES (234 Fed. Appx. 288); GARCIA-AGUILAR *v.* UNITED STATES (234 Fed. Appx. 275); HERNANDEZ-HUERTA *v.* UNITED STATES (234 Fed. Appx. 303); HERNANDEZ-ROMERO *v.* UNITED STATES (234 Fed. Appx. 270); LOPEZ-HERNANDEZ, AKA ABITIA *v.* UNITED STATES (234 Fed. Appx. 288); MARRUFO-VILLALOBOS *v.* UNITED STATES (234 Fed. Appx. 257); MORENO, AKA MORENO-PRIETO *v.* UNITED STATES (234 Fed. Appx. 271); and TORRES-ESTRADA *v.* UNITED STATES (234 Fed. Appx. 257). C. A. 5th Cir. Certiorari denied.

No. 07–7127. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 655.

No. 07–7129. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 540.

No. 07–7130. STODDARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 241.

No. 07–7132. SIMPKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 334.

No. 07–7133. SCHOMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 783.

No. 07–7134. NUNEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 455 F. 3d 1223.

No. 07–102. RANDOLPH, WARDEN *v.* RAYGOZA. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 474 F. 3d 958.

No. 07–173. BELBACHA *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari before judgment denied.

No. 07–302. LUM ET AL. *v.* BANK OF AMERICA ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER and JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 07–319. TITELMAN *v.* TITELMAN. Sup. Ct. Ga. Motions of Justice for Children et al. and Protective Mothers Alliance for Justice et al. for leave to file briefs as *amici curiae* granted. Certiorari denied.

Rehearing Denied

No. 06–10438. DYE *v.* BURT, WARDEN, *ante*, p. 942;

No. 06–10859. FLORES *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL., *ante*, p. 830;

No. 06–11240. DHUE *v.* KASLE STEEL CORP., *ante*, p. 840;

No. 06–11491. EL BEY *v.* DAVIS ET AL., *ante*, p. 849;

No. 06–11568. ASHANTI *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, *ante*, p. 851;

No. 06–11818. CARTER *v.* BLAKE, *ante*, p. 867;

No. 06–11885. CONWAY *v.* TEXAS BOARD OF PARDONS AND PAROLES ET AL., *ante*, p. 871;

No. 06–11970. CALLIES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 877;

No. 06–11988. IN RE WILLIAMS, *ante*, p. 808;

No. 06–12065. CASSELL *v.* CHRISTIAN SCIENCE BOARD OF DIRECTORS, *ante*, p. 882;

No. 06–12071. WALKER *v.* TEXAS, *ante*, p. 882;

No. 07–42. STOYANOV *v.* DEPARTMENT OF THE NAVY; and STOYANOV *v.* MERIT SYSTEMS PROTECTION BOARD, *ante*, p. 887;

No. 07–5264. BELL *v.* DAVENPORT, *ante*, p. 907;

No. 07–5394. BELL *v.* KITCHINGS, DEPARTMENT OF EMPLOYMENT SERVICES, *ante*, p. 915; and

No. 07–5438. BELL *v.* NORDSTROM ET AL., *ante*, p. 917. Petitions for rehearing denied.

NOVEMBER 15, 2007

Miscellaneous Order

No. 07A383. SCHWAB *v.* FLORIDA. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, granted pending the timely filing and disposition of a petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

NOVEMBER 16, 2007

Miscellaneous Order

No. 06–989. HALL STREET ASSOCIATES, L. L. C. *v.* MATTEL, INC. C. A. 9th Cir. [Certiorari granted, 550 U. S. 968.] The parties are directed to file supplemental briefs addressing the following questions: "(1) Does authority exist outside the Federal Arbitration Act (FAA) under which a party to litigation begun without reliance on the FAA may enforce a provision for judicial review of an arbitration award? (2) If such authority does exist, did the parties, in agreeing to arbitrate, rely in whole or part on that authority? (3) Has petitioner in the course of this litigation waived any reliance on authority outside the FAA for enforcing the judicial review provision of the parties' arbitration agreement?" Briefs, not to exceed 6,000 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Tuesday, November 27, 2007. Reply briefs, not to exceed 3,000 words, may be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Monday, December 3, 2007.

NOVEMBER 20, 2007

Probable Jurisdiction Postponed

No. 07–77. RILEY, GOVERNOR OF ALABAMA *v.* KENNEDY ET AL. Appeal from D. C. M. D. Ala. Further consideration of question of jurisdiction postponed to hearing of case on the merits.

Certiorari Granted

No. 06–939. CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA ET AL. *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 463 F. 3d 1076.

No. 07–290. DISTRICT OF COLUMBIA ET AL. *v.* HELLER. C. A. D. C. Cir. Certiorari granted limited to the following question: "Whether the following provisions, D. C. Code §§ 7–2502.02(a)(4), 22–4504(a), 7–2507.02 (2001), violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?" Reported below: 478 F. 3d 370.

NOVEMBER 26, 2007

Affirmed on Appeal

No. 07–375. RABIEE ET AL. *v.* DIETZ, DIRECTOR, ALABAMA ADMINISTRATIVE OFFICE OF COURTS. Affirmed on appeal from D. C. N. D. Ala.

Certiorari Granted—Vacated and Remanded

No. 06–11372. DUARTE, AKA BARBOZA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Solicitor General in his brief for respondent filed October 24, 2007.

Certiorari Dismissed

No. 07–6564. SENATOR *v.* SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY, ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–6915. BARRITT *v.* MCBRIDE, WARDEN. Cir. Ct. Ohio County, W. Va. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 07M21. PARK *v.* UNITED STATES; and

No. 07M22. JAMES *v.* MISSISSIPPI BAR. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06–10966. WALKER *v.* GEORGIA, *ante*, p. 833. Respondent is requested to file a response to the petition for rehearing within 30 days.

No. 06–11187. IN RE GAY. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 808] denied.

No. 06–11443. VEALE *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 07–5519. IN RE NIMMONS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 807] denied.

No. 07–6604. SIBLEY *v.* SUPREME COURT OF FLORIDA. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 17, 2007, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 07–579. IN RE MILES ET AL.;
No. 07–580. IN RE MODERSKI ET AL.;
No. 07–7388. IN RE CABADA ARENAL; and
No. 07–7410. IN RE BASS. Petitions for writs of habeas corpus denied.

No. 07–6592. IN RE SIBLEY;
No. 07–6659. IN RE WINDING;
No. 07–6688. IN RE CRANFORD;
No. 07–6805. IN RE SHAKUR; and
No. 07–7113. IN RE BELL. Petitions for writs of mandamus denied.

Certiorari Denied

No. 06–11802. EASTMAN *v.* TROPICANA PRODUCTS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 882.

No. 06–12085. BARNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 282.

No. 07–60. ACOSTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 3d 132.

No. 07–67. KOTULA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 472.

No. 07–76. HENRICHS ET UX. *v.* VALLEY VIEW DEVELOPMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 3d 609.

No. 07–89. TOLEDO ET AL. *v.* JACKSON, SECRETARY OF HOUSING AND URBAN DEVELOPMENT. C. A. 6th Cir. Certiorari denied. Reported below: 485 F. 3d 836.

No. 07–100. HARRIS COUNTY, TEXAS *v.* STALEY; and
No. 07–286. STALEY *v.* HARRIS COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 3d 305.

No. 07–130. EDWARDS *v.* KENYON. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 3d 802.

No. 07–176. AMBER-MESSICK, ADMINISTRATRIX OF THE ESTATE OF KANGAS, DECEASED *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 483 F. 3d 1316.

No. 07–192. ADVANCED CARDIAC SOLUTIONS, P. C., ET AL. *v.* CENTRAL ADMIXTURE PHARMACY SERVICES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 482 F. 3d 1347.

No. 07–194. GOMEZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–198. EMCON/OWT, INC. *v.* CHAO, SECRETARY OF LABOR, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 875.

No. 07–202. M2 SOFTWARE, INC. *v.* VIACOM INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 653.

No. 07–211. SANCHEZ ET AL. *v.* SAN DIEGO COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 464 F. 3d 916.

No. 07–240. MCCONNELL ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 478 F. 3d 1092.

No. 07–243. BENAVIDES RIVERA ET AL. *v.* MUKASEY, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 869.

No. 07–254. TERMORIO S. A. E. S. P. ET AL. *v.* ELECTRIFICADORA DEL ATLANTICO S. A. E. S. P. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 487 F. 3d 928.

No. 07–283. MILLER ET AL. *v.* BRAND ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 487 F. 3d 862.

No. 07–336. NATIONAL WINE & SPIRITS, INC., ET AL. *v.* MICHIGAN ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 477 Mich. 935, 723 N. W. 2d 834.

No. 07–341. NEWMAN *v.* SONDHELM ET AL. Ct. App. Ind. Certiorari denied. Reported below: 860 N. E. 2d 928.

No. 07–342. LUCKEY ET AL. *v.* PINELLAS COUNTY, FLORIDA, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 967 So. 2d 915.

No. 07–346. TOWNSHIP OF ANN ARBOR, MICHIGAN, ET AL. *v.* DILAURA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 3d 666.

No. 07–347. PRATT *v.* PRATT. Ct. App. Colo. Certiorari denied. Reported below: 160 P. 3d 361.

No. 07–349. O'CALLAGHAN *v.* MILGRAM, ATTORNEY GENERAL OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 233 Fed. Appx. 181.

No. 07–351. DELP *v.* NU-WAY ENERGY CORP. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 205 S. W. 3d 667.

No. 07–354. HOULTON BAND OF MALISETT INDIANS *v.* RYAN, EXECUTIVE DIRECTOR, MAINE HUMAN RIGHTS COMMISSION, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 484 F. 3d 73.

No. 07–357. AROOSTOOK BAND OF MICMACS *v.* RYAN, EXECUTIVE DIRECTOR, MAINE HUMAN RIGHTS COMMISSION, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 484 F. 3d 41.

No. 07–360. SMITH *v.* FRYE, JUDGE, CIRCUIT COURT OF WEST VIRGINIA, 21ST JUDICIAL CIRCUIT. C. A. 4th Cir. Certiorari denied. Reported below: 488 F. 3d 263.

No. 07–361. WILLIAMS *v.* WATSON ET AL. Ct. Crim. App. Tenn. Certiorari denied.

No. 07–362. TEEN RANCH, INC., ET AL. *v.* UDOW ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 479 F. 3d 403.

No. 07–363. BIOMEDINO, L. L. C. *v.* WATERS TECHNOLOGY CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 490 F. 3d 946.

No. 07–366. ESTATE OF JENKINS *v.* BARTLETT. C. A. 7th Cir. Certiorari denied. Reported below: 487 F. 3d 482.

No. 07–376. SPENCER DIESEL INJECTION & TURBO, INC. *v.* CITY OF SIOUX CITY, IOWA, ET AL. Ct. App. Iowa. Certiorari denied. Reported below: 735 N. W. 2d 202.

No. 07–377. CRAFTSMEN LIMOUSINE, INC., ET AL. *v.* FORD MOTOR CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 491 F. 3d 380.

No. 07–378. KUHN *v.* SULZER ORTHOPEDICS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 498 F. 3d 365.

No. 07–379. KROUNER *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 961 So. 2d 934.

No. 07–383. VOORHEES ET UX. *v.* BOARD OF ZONING APPEALS OF FAIRFAX COUNTY ET AL. Sup. Ct. Va. Certiorari denied.

No. 07–390. MOSELEY *v.* CIRCUIT COURT OF VIRGINIA, ARLINGTON COUNTY. Sup. Ct. Va. Certiorari denied. Reported below: 273 Va. 688, 643 S. E. 2d 190.

No. 07–392. BLUEMEL *v.* FRIEL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 521.

No. 07–396. PAVLOV ET UX. *v.* INGLES MARKETS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 549.

No. 07–397. ARTHUR *v.* KING, ATTORNEY GENERAL OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 500 F. 3d 1335.

No. 07–398. LACY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–399. BAZARGANI *v.* SNYDER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 241 Fed. Appx. 20.

No. 07–401. SHARON G. ET VIR *v.* HURON COUNTY DEPARTMENT OF JOBS AND FAMILY SERVICES ET AL. Ct. App. Ohio, Huron County. Certiorari denied.

No. 07–402. FOOD EXPRESS, INC. *v.* BOSTAIN ET UX. Sup. Ct. Wash. Certiorari denied. Reported below: 159 Wash. 2d 700, 153 P. 3d 846.

No. 07–403. FRENCH, TRUSTEE FOR THE BANKRUPTCY ESTATE OF BEMIS ET UX. *v.* FOUST ET AL. Ct. App. Ohio, Allen County. Certiorari denied.

No. 07–406. XIAOMING WANG *v.* CHINA HEALTHWAYS INSTITUTE, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 491 F. 3d 1337.

No. 07–422. TEMPLE UNIVERSITY HOSPITAL *v.* GALLAGHER ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 919 A. 2d 980.

No. 07–428. ZBUKA *v.* MARATHON ASHLAND PETROLEUM, LLC. C. A. 6th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 608.

No. 07–434. FORYOH *v.* TRITON COLLEGE. C. A. 7th Cir. Certiorari denied. Reported below: 197 Fed. Appx. 500.

No. 07–436. GOLDBERG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 491 F. 3d 668.

No. 07–438. MOYERS *v.* SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION, BOARD OF CHIROPRACTIC EXAMINERS. Ct. App. S. C. Certiorari denied.

No. 07–447. RIDGEVIEW PARTNERS, LLC *v.* ENTWISTLE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 227 Fed. Appx. 80.

No. 07–448. RANDLETT *v.* HURLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–450. OTTESEN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–453. CANATELLA *v.* VAN DE KAMP ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 486 F. 3d 1128.

No. 07–461. KAMINSKY *v.* SAINT LOUIS UNIVERSITY SCHOOL OF MEDICINE. C. A. 8th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 646.

No. 07–462. RUSSELL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1221, 931 N. E. 2d 367.

No. 07–465. BOARD OF EDUCATION OF FAYETTE COUNTY, KENTUCKY *v.* L. M., AS LEGAL GUARDIAN OF T. D., A MINOR, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 478 F. 3d 307.

No. 07–477. GENENDO PHARMACEUTICAL, N. V. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 485 F. 3d 958.

No. 07–489. WELSHANS ET AL. *v.* AETNA LIFE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 481 F. 3d 369.

No. 07–505. HOLMES *v.* WALLER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–509. LESLIE *v.* JOHNSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 305.

No. 07–517. KING *v.* CONROE INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 1.

No. 07–518. MUNOZ-FRANCO *v.* UNITED STATES;
No. 07–528. UMPIERRE-HERNANDEZ *v.* UNITED STATES;
No. 07–530. GUTIERREZ-RODRIGUEZ *v.* UNITED STATES; and
No. 07–536. SANCHEZ-ARAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 487 F. 3d 25.

No. 07–520. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 450.

No. 07–561. LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 853.

No. 07–566. PEREZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 140.

No. 07–567. PIEDAD ORTIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–5006. MCCARGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 3d 192.

No. 07–5131. GUICE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 952 So. 2d 129.

No. 07–5140. AMERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 483 F. 3d 73.

No. 07–5195. REYNARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 3d 1008.

No. 07–5333. POWELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 483 F. 3d 836.

No. 07–5337. LANDSAW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 206 Fed. Appx. 773.

No. 07–5449. ANAYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 580.

No. 07–5600. MCNEILL *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 476 F. 3d 206.

No. 07–5733. CAIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 487 F. 3d 1108.

No. 07–5798. GRIFFIN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 953 So. 2d 541.

No. 07–5928. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 3d 849.

No. 07–5985. EVERSOLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 3d 1024.

No. 07–6068. WARD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–6080. THORNTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 391, 161 P. 3d 3.

No. 07–6135. WILLOUGHBY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 07–6410. DILL *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 488 F. 3d 1344.

No. 07–6566. FELIX *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 218.

No. 07–6574. YEE *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 463 F. 3d 893.

No. 07–6579. MACHADO *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 618.

No. 07–6582. SIBLEY *v.* SIBLEY. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 972 So. 2d 194.

No. 07–6584. LANE *v.* CHAPIN. C. A. 8th Cir. Certiorari denied.

No. 07–6594. COLLINS *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6596. CAMPBELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 226 S. W. 3d 418.

No. 07–6597. PEEDE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 955 So. 2d 480.

No. 07–6599. TYLER *v.* CAIN, WARDEN. Sup. Ct. La. Certiorari denied. Reported below: 959 So. 2d 487.

No. 07–6605. AYALA *v.* SAIT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–6608. BATSHEVER *v.* CUOMO, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–6612. BARNETT *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6613. ALLEN *v.* TERRELL, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–6614. BANKS *v.* CHRONES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6615. BROWN *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 07–6616. ARMENTA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6617. CASTANEDA *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6624. MORGAN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–6630. POMPA *v.* SHANNON, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6631. REED *v.* HENGSTLER. Ct. App. Ind. Certiorari denied.

No. 07–6633. WATERS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–6635. WORKMAN *v.* IOWA. Dist. Ct. Polk County, Iowa. Certiorari denied.

No. 07–6643. JOHNSON *v.* WALKER, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6645. SMITH *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 07–6646. JOHNSON *v.* HALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6650. BILLARD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–6652. ORTIZ ARCE *v.* OUTLAW, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6655. KERN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–6668. STOLLER *v.* GOOGLE, INC., ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–6670. MARINO *v.* HUMPHREY. C. A. 2d Cir. Certiorari denied.

No. 07–6678. SEGOVIANO *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6680. SHELLEY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6681. WRIGHT *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 473 F. 3d 85.

No. 07–6682. WINFIELD *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 07–6683. CURTIS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 773.

No. 07–6684. MARINO *v.* BERBARY, SUPERINTENDENT, COLLINS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–6686. SHARP *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 07–6687. BIRCH *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 705.

No. 07–6693. EVINS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 373 S. C. 404, 645 S. E. 2d 904.

No. 07–6696. SMITH *v.* SEDGWICK COUNTY DISTRICT COURT. C. A. 10th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 199.

No. 07–6697. RICHARDS *v.* HESS ET AL. Cir. Ct. Calhoun County, W. Va. Certiorari denied.

No. 07–6699. MCCULLEY *v.* CITY OF TUCSON, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 626.

No. 07–6701. JONES *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6708. WALDON *v.* WILKINS. Ct. App. Ind. Certiorari denied. Reported below: 859 N. E. 2d 395.

No. 07–6713. CABALLERO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–6717. WOO *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6724. BRANTLEY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 959 So. 2d 1194.

No. 07–6729. THUES *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6732. MARTIN *v.* STACK. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 277.

No. 07–6733. STOYER *v.* COMMUNITY HOUSING NETWORK, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–6739. JONES *v.* FAY. Ct. App. Minn. Certiorari denied.

No. 07–6740. WILKE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6746. VAUGHAN *v.* WORKMAN. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 959 So. 2d 744.

No. 07–6755. LANG *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6757. BAILEY *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 280.

No. 07–6765. BLAKEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 927.

No. 07–6789. HERNANDEZ-VALDEZ, AKA AGUIRRE-VIRGIL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 405.

No. 07–6802. COLON *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6812. SYKES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 900.

No. 07–6818. WILLIAMS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 959 So. 2d 260.

No. 07–6832. BATTS *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 281 Conn. 682, 916 A. 2d 788.

No. 07–6833. ABULKHAIR *v.* PASSAIC COUNTY BOARD OF SOCIAL SERVICES ET AL. Sup. Ct. N. J. Certiorari denied.

No. 07–6835. BAETA *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 293.

No. 07–6848. BARFIELD *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 608.

No. 07–6856. WYNN *v.* FLORIDA (three judgments). Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 961 So. 2d 942 (second judgment) and 1003 (first judgment); 963 So. 2d 706 (third judgment).

No. 07–6862. SYKES *v.* HORRY COUNTY, SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 208.

No. 07–6865. ALEXANDER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–6873. COVERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–6878. PRICE, AKA ROCK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 498 F. 3d 613.

No. 07–6888. PRITCHETT *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 270.

No. 07–6894. MCDANIEL *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 07–6899. YANG *v.* CITY OF SAN JOSE, CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–6910. MARTINEZ, AKA SAUCEDO CALDERON *v.* HERNANDEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6928. HOKENSTROM *v.* CATTELL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 07–6943. WILSON *v.* STOWITZKY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MERCER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6964. BRIGANCE *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6966. ADAMS *v.* GEORGE, JUDGE, SUPERIOR COURT OF GEORGIA, COBB COUNTY (two judgments). Sup. Ct. Ga. Certiorari denied.

No. 07–6968. AMEDEO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 487 F. 3d 823.

No. 07–6981. NEWMAN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6987. KRETCHMAR *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 241 Fed. Appx. 863.

No. 07–6992. GREER *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 493 F. 3d 952.

No. 07–6993. TRIMBLE *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 07–6996. STRASBURG *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 148 Cal. App. 4th 1052, 56 Cal. Rptr. 3d 306.

No. 07–7017. PENROD *v.* UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT. C. A. 10th Cir. Certiorari denied.

No. 07–7033. TWEED *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–7070. POLYNICE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 483 F. 3d 1169.

No. 07–7071. OVERSTREET *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 190 Fed. Appx. 291.

No. 07–7077. KALLO *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 756.

No. 07–7085. RED STAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 401.

No. 07–7086. HARRISON, AKA GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–7087. GILYARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–7089. WHITEHEAD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 487 F. 3d 1068.

No. 07–7092. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 498 F. 3d 523.

No. 07–7096. BURRELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–7101. SAUNDERS *v.* RUSSO, SUPERINTENDENT, SOUZA-BARANOWSKI CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied.

No. 07–7131. STROMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 500 F. 3d 61.

No. 07–7135. ESTRADA-DIAZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–7136. DEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 780.

No. 07–7138. MILES, AKA LAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 148.

No. 07–7139. MCCULLOUGH *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 236 Fed. Appx. 615.

No. 07–7140. POLK *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 229 Fed. Appx. 921.

No. 07–7143. HORICIANU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 723.

No. 07–7148. HINOJOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–7157. CHAVEZ-BARRAZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 946.

No. 07–7158. EVANS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 3d 315.

No. 07–7160. GRIFFIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7161. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7164. MACKEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 907.

No. 07–7167. QUINN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 431.

No. 07–7168. RIVERA-CRUZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–7169. REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 858.

No. 07–7172. HEIJNEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 297.

No. 07–7173. HEIJNEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 725.

No. 07–7175. GORDON *v.* LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 224 Fed. Appx. 192.

No. 07–7182. COOK *v.* CRAIG, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 241 Fed. Appx. 828.

No. 07–7188. SINESTERRA COLORADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7192. SUGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–7193. SUGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–7194. JAFFRIE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 326.

No. 07–7195. KHANALIZADEH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 493 F. 3d 479.

No. 07–7199. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 441.

No. 07–7205. VAZQUEZ-MENDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–7208. CRAFT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 495 F. 3d 259.

No. 07–7214. LABRA-MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 497.

No. 07–7217. ALEXANDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 399.

No. 07–7230. NANCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 481 F. 3d 882.

No. 07–7231. NICOLAS-MARCIAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 460.

No. 07–7232. OWENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7235. CUEVAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 496 F. 3d 256.

No. 07–7236. YONGO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–7238. BIBLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 495 F. 3d 621.

No. 07–7242. TURNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 576.

No. 07–7247. OGLETREE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7249. MACKEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 907.

No. 07–7251. EVANS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–7254. WHITE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7257. WATZMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 3d 1004.

No. 07–7259. ALVAREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–7262. BRUNET *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7265. LEACH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 491 F. 3d 858.

No. 07–7266. LIGHTFOOT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 483 F. 3d 876.

No. 07–7269. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 208.

No. 07–7282. CLARKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 831.

No. 07–7283. CHAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 39.

No. 07–7286. GODWIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 898.

No. 07–7289. LENDOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–7293. BENZING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 623.

No. 07–7295. TRUJILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 814.

No. 07–7300. RIDDICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–7302. AVILA-SIFUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 971.

No. 07–7305. SOTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–7306. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 356.

No. 07–7307. CIQUEIROS VISCARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 494 F. 3d 490.

No. 07–7308. HERNANDEZ-GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 495 F. 3d 55.

No. 07–7310. GAINES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 487.

No. 07–7311. HENRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7313. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 57.

No. 07–7314. GONZALEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 495 F. 3d 577.

No. 07–7315. HROBOWSKI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 108.

No. 07–7318. GRAVLEY *v.* SPERANZA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 213.

No. 07–7319. RUSSELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7320. RAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–7321. GARCIA-CARDENAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 579.

No. 07–7325. SPURLOCK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 495 F. 3d 1011.

No. 07–7326. SANTAMARIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 492 F. 3d 930.

No. 07–7333. CHACON-CAMACHO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 922.

No. 07–7334. CASTORENA-IBARRA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 846.

No. 07–7338. LEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 209.

No. 07–7341. HOLBROOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 29.

No. 07–7342. GARCIA *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 65 M. J. 334.

No. 07–7343. GASCA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 459.

No. 07–7344. FULTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–7346. GIL-CARMONA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 497 F. 3d 52.

No. 07–7352. CEDENO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 243 Fed. Appx. 682.

No. 07–7356. BRACY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 154.

No. 07–7358. HENDERSON, AKA SYKES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 834.

No. 07–7361. STRADER *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 07–7372. TICAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 402.

No. 07–7374. JACKSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 504 F. 3d 250.

No. 07–7375. VELASQUEZ-LAGUNAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 501.

No. 07–7377. JANATI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 843.

No. 07–7379. SUMMERVILLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 871.

No. 07–7382. NARANJO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 223 Fed. Appx. 167.

No. 07–384. DANIEL MEASUREMENT SERVICES, INC. *v.* EAGLE RESEARCH CORP. Cir. Ct. Putnam County, W. Va. Motions of

Product Liability Advisory Council, Inc., National Association of Manufacturers et al., and Washington Legal Foundation for leave to file briefs as *amici curiae* granted. Certiorari denied.

No. 07–7241. WASHINGTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

Rehearing Denied

No. 06–1193. GAMBLA *v.* WOODSON, *ante*, p. 810;

No. 06–1426. JACKSON *v.* FISHER ET AL., *ante*, p. 812;

No. 06–1476. DUFF *v.* NEVADA ET AL., *ante*, p. 813;

No. 06–1478. ALDERMAN *v.* TERRY, WARDEN, *ante*, p. 813;

No. 06–1483. TECCHIO ET UX. *v.* CITICORP MORTGAGE, INC., *ante*, p. 814;

No. 06–1513. REGATTA BAY LTD. *v.* UNITED STATES, *ante*, p. 815;

No. 06–1545. R. J. REYNOLDS TOBACCO CO. ET AL. *v.* ENGLE ET AL., *ante*, p. 941;

No. 06–1556. DUFF *v.* NEVADA ET AL., *ante*, p. 817;

No. 06–1607. ABUSHEIKH *v.* KEISLER, ACTING ATTORNEY GENERAL, ET AL., *ante*, p. 820;

No. 06–1655. TUNG *v.* CHIU, *ante*, p. 823;

No. 06–1686. PALLISCO *v.* HURON TOWNSHIP, MICHIGAN, ET AL., *ante*, p. 824;

No. 06–1705. IN RE PO KEE WONG, *ante*, p. 807;

No. 06–1706. WORDLAW *v.* CITY OF CHICAGO, ILLINOIS, ET AL., *ante*, p. 826;

No. 06–10088. BARRAZA CAZARES *v.* UNITED STATES, *ante*, p. 827;

No. 06–10156. MCCORMICK *v.* BRAVERMAN ET AL., *ante*, p. 828;

No. 06–10835. TILLMAN *v.* UNITED STATES, *ante*, p. 830;

No. 06–11084. DEERE *v.* WILLIAMS, WARDEN, *ante*, p. 835;

No. 06–11138. PETTIES *v.* KEISLER, ACTING ATTORNEY GENERAL, *ante*, p. 837;

No. 06–11185. BROWN *v.* FLORIDA, *ante*, p. 838;

No. 06–11192. HOLTS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 838;

No. 06–11273. JOHNSON *v.* CURTIS, WARDEN, *ante*, p. 841;

No. 06–11295. IN RE ALLEN, *ante*, p. 809;

No. 06–11362. BAKARICH *v.* NEW JERSEY, *ante*, p. 844;

No. 06–11365. MOORE *v.* PURKETT, SUPERINTENDENT, EASTERN RECEPTION, DIAGNOSTIC AND CORRECTIONAL CENTER, *ante*, p. 844;

No. 06–11461. HAND *v.* CARGILL FERTILIZER, INC., ET AL., *ante*, p. 847;

No. 06–11596. NGHIEM *v.* FUJITSU MICROELECTRONICS, INC., AKA FUJITSU MICROELECTRONICS AMERICA, INC., ET AL., *ante*, p. 853;

No. 06–11709. GHEE *v.* TARGET NATIONAL BANK, FKA RETAILERS NATIONAL BANK-TARGET VISA, *ante*, p. 859;

No. 06–11714. HINTON *v.* UNITED STATES, *ante*, p. 860;

No. 06–11720. STRINGER *v.* LOWE, *ante*, p. 860;

No. 06–11769. HENDERSON *v.* VIRGINIA, *ante*, p. 863;

No. 06–11778. NAKAGAWA *v.* SHELTON, *ante*, p. 864;

No. 06–11827. WATSON *v.* UNITED STATES, *ante*, p. 868;

No. 06–11871. LONG *v.* KENTUCKY ET AL., *ante*, p. 870;

No. 06–11942. GENAO *v.* UNITED STATES, *ante*, p. 875;

No. 06–11968. DRAY *v.* COURT OF COMMON PLEAS OF OHIO, ALLEN COUNTY, ET AL., *ante*, p. 876;

No. 06–11973. IN RE DUBOSE, *ante*, p. 809;

No. 06–12004. IN RE MERRITT, *ante*, p. 808;

No. 06–12016. JACKSON *v.* LIBRARY OF CONGRESS, *ante*, p. 879;

No. 06–12028. NGUYEN *v.* UNITED STATES, *ante*, p. 880;

No. 06–12054. SEARLES *v.* WEST HARTFORD BOARD OF EDUCATION ET AL.; SEARLES *v.* RELIC ET AL.; and SEARLES *v.* WEST HARTFORD BOARD OF EDUCATION ET AL., *ante*, p. 881;

No. 06–12057. MOORE *v.* CITY OF DETROIT, MICHIGAN, ET AL., *ante*, p. 881;

No. 06–12083. MOFFETT *v.* ENDICOTT, WARDEN, *ante*, p. 883;

No. 06–12088. HURST *v.* TRADER, JUDGE, COURT OF COMMON PLEAS OF DELAWARE, ET AL., *ante*, p. 883;

No. 07–11. SMITH *v.* FRIEDMAN ET AL., *ante*, p. 886;

No. 07–58. EICHHOLZ *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, *ante*, p. 888;

No. 07–120. LAMBERT *v.* DEPARTMENT OF STATE ET AL., *ante*, p. 890;

No. 07–145. TITTLE *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 890;

No. 07–171. FLORANCE *v.* TAYLOR, *ante*, p. 891;

No. 07–228. SASSOWER *v.* UNITED STATES, *ante*, p. 892;

No. 07–5023. PENDER *v.* UNION OF C. S. E. A. ET AL., *ante*, p. 893;

No. 07–5059. LYND *v.* HALL, WARDEN, *ante*, p. 895;

No. 07–5066. THOMAS *v.* HULICK, WARDEN, *ante*, p. 895;

No. 07–5068. MCKEE *v.* MITCHELL, COUNTY ATTORNEY, OSWEGO, NEW YORK, *ante*, p. 896;

No. 07–5070. PENDER *v.* POTTER, POSTMASTER GENERAL, ET AL., *ante*, p. 896;

No. 07–5106. GIBSON *v.* ADAMS, WARDEN, ET AL., *ante*, p. 898;

No. 07–5143. PENNY *v.* BOOKER, WARDEN, *ante*, p. 900;

No. 07–5158. TURNER *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL., *ante*, p. 900;

No. 07–5176. BASILIO ET VIR *v.* CAMRAY DEVELOPMENT & CONSTRUCTION CO. ET AL., *ante*, p. 902;

No. 07–5219. FAVORS *v.* GARRETT ET AL., *ante*, p. 904;

No. 07–5358. IN RE PASCHAL, *ante*, p. 807;

No. 07–5371. BROWN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 913;

No. 07–5413. MURRAY ET UX. *v.* TOWN OF MANSURA, LOUISIANA, ET AL., *ante*, p. 915;

No. 07–5446. ACKERMAN *v.* FORTIS, INC., ET AL., *ante*, p. 917;

No. 07–5508. IN RE BAER, *ante*, p. 808;

No. 07–5561. TIMMONS *v.* MANATT, PHELPS & PHILLIPS, LLP, ET AL., *ante*, p. 923;

No. 07–5578. SAI ZHAO JIANG *v.* KEISLER, ACTING ATTORNEY GENERAL, *ante*, p. 924;

No. 07–5629. MICHALSKI *v.* NEW YORK, *ante*, p. 954;

No. 07–5670. PRICE *v.* MCCORMACK ET AL., *ante*, p. 955;

No. 07–5676. IN RE DUNLAP, *ante*, p. 946;

No. 07–5835. IN RE SIMON, *ante*, p. 946;

No. 07–5843. IN RE BROGDON, *ante*, p. 808;

No. 07–5879. DAVIS *v.* BACON ET AL., *ante*, p. 978;

No. 07–5917. HANNA *v.* JEFFREYS, WARDEN, *ante*, p. 933;

No. 07–6369. IN RE CALDWELL, *ante*, p. 946; and

No. 07–6657. WATTERS *v.* UNITED STATES, *ante*, p. 985. Petitions for rehearing denied.

No. 07–24. BILAL *v.* BP AMERICA, INC., ET AL., *ante*, p. 943. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

NOVEMBER 30, 2007

Dismissal Under Rule 46

No. 07–511. ALSTON ET AL. *v.* ADVANCED BRANDS & IMPORTING, INC., ET AL. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 494 F. 3d 562.

DECEMBER 3, 2007

Certiorari Dismissed

No. 07–6768. AL-HAKIM *v.* PUBLIX SUPERMARKETS. Dist. Ct. App. Fla., 2d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 965 So. 2d 130.

No. 07–6778. RONDEAU *v.* SUPREME COURT OF NEW HAMPSHIRE. Sup. Ct. N. H. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 07M23. DE SILVA *v.* PITTS ET UX. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 07M24. HAMRICK *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. Motion for leave to proceed as a seaman denied.

No. 06–937. QUANTA COMPUTER, INC., ET AL. *v.* LG ELECTRONICS, INC. C. A. Fed. Cir. [Certiorari granted, 551 U. S. 1187.] Motion of petitioners for leave to file volume II of the joint appendix under seal granted.

No. 06–1346. ALI *v.* ACHIM ET AL. C. A. 7th Cir. [Certiorari granted, 551 U. S. 1188.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 06–12111. IN RE SKILLERN. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 808] denied.

No. 07–21. CRAWFORD ET AL. *v.* MARION COUNTY ELECTION BOARD ET AL.; and

No. 07–25. INDIANA DEMOCRATIC PARTY ET AL. *v.* ROKITA, SECRETARY OF STATE OF INDIANA, ET AL. C. A. 7th Cir. [Certiorari granted, 551 U. S. 1192.] Motion of Current and Former Secretaries of State for leave to file a brief as *amici curiae* granted.

No. 07–270. BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK *v.* GULINO ET AL. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 07–5013. IN RE ROGERS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 808] denied.

No. 07–5750. TURNER *v.* DONNELLY ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 07–7467. IN RE CARROLL; and

No. 07–7580. IN RE TELLIER ET AL. Petitions for writs of habeas corpus denied.

No. 07–6855. IN RE MILLER. Petition for writ of mandamus denied.

No. 07–6850. IN RE BRAVO. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 06–1204. REPUBLIC OF THE PHILIPPINES ET AL. *v.* PIMENTEL ET AL. C. A. 9th Cir. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue on the following questions: "Whether the Republic of the Philippines (Republic) and its Presidential Commission on Good Government (PCGG), having been dismissed from the interpleader action based on their successful assertion of sovereign immunity, had the right to appeal the District Court's determination that they were not indispensable parties under Federal Rule of Civil Procedure 19(b); and whether the Republic and its PCGG have the right to seek this Court's review of the Court of Appeals' opinion affirming the District Court." Reported below: 464 F. 3d 885.

No. 07–308. UNITED STATES *v.* CLINTWOOD ELKHORN MINING CO. ET AL. C. A. Fed. Cir. Certiorari granted. Reported below: 473 F. 3d 1373.

No. 07–440. ROTHGERY *v.* GILLESPIE COUNTY, TEXAS. C. A. 5th Cir. Certiorari granted. Reported below: 491 F. 3d 293.

Certiorari Denied

No. 06–1637. HODGES *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 949 So. 2d 706.

No. 06–11844. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 3d 315.

No. 06–12099. GAYTAN-GONZALEZ, AKA GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 631.

No. 07–10. MONTES *v.* RANSOM ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 378.

No. 07–48. SEIBER ET VIR *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 210 Ore. App. 215, 149 P. 3d 1243.

No. 07–101. FINLAYSON-GREEN *v.* MUKASEY, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 919.

No. 07–128. JINDAL UNITED STEEL CORP. ET AL. *v.* CHAO, SECRETARY OF LABOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 3d 320.

No. 07–137. BARANOWSKI *v.* HART ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 438 F. 3d 112.

No. 07–164. KINDER MORGAN CO2 CO., L. P. *v.* HEIMANN ET AL. Ct. App. N. M. Certiorari denied. Reported below: 140 N. M. 552, 144 P. 3d 111.

No. 07–226. RINALDI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 461 F. 3d 922.

No. 07–261. LIFE PARTNERS, INC. *v.* MORRISON, COMMISSIONER, VIRGINIA STATE CORPORATION COMMISSION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 484 F. 3d 284.

No. 07–266. PERFECT 10, INC. *v.* CCBILL LLC ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 3d 1102.

No. 07–420. VILLAGE OF GLENDALE, OHIO *v.* PAGAN. C. A. 6th Cir. Certiorari denied. Reported below: 492 F. 3d 766.

No. 07–427. VASQUEZ *v.* LOS ANGELES COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 3d 1246.

No. 07–433. DOMINICK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–441. CRAIG *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 944 So. 2d 660.

No. 07–442. RAISER *v.* BRIGHAM YOUNG UNIVERSITY. Ct. App. Utah. Certiorari denied.

No. 07–445. MORGAN *v.* CHICAGO TITLE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 656.

No. 07–451. PANHANDLE PRODUCERS & ROYALTY OWNERS ASSN. ET AL. *v.* OKLAHOMA TAX COMMISSION ET AL. Ct. App. Okla. Certiorari denied. Reported below: 162 P. 3d 960.

No. 07–456. BAGHERPOUR *v.* SNYDER ET UX. C. A. 3d Cir. Certiorari denied. Reported below: 241 Fed. Appx. 20.

No. 07–485. ROQUE-ESPINOSA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 495.

No. 07–490. DOWNER ET AL. *v.* SIEGEL. C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 3d 623.

No. 07–498. FINGAL-GRIFFIN *v.* OFFICE OF CHIEF DISCIPLINARY COUNSEL. Sup. Ct. Mo. Certiorari denied.

No. 07–514. RAINEY *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 07–546. WHITEHEAD *v.* ABB LUMMUS GLOBAL BV. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 241.

No. 07–555. ROSENBERG *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 223 Fed. Appx. 985.

No. 07–571. HILVETY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 582.

No. 07–578. BURT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 495 F. 3d 733.

No. 07–598. DAVIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 235 Fed. Appx. 747.

No. 07–603. HILDRETH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 485 F. 3d 1120.

No. 07–5060. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 404.

No. 07–5307. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 250.

No. 07–5323. CARTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 481 F. 3d 601.

No. 07–5338. LEAR *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 954 So. 2d 31.

No. 07–5487. LEDESMA *v.* CALIFORNIA; and
No. 07–5732. CATALAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–5582. SPENCER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 478 F. 3d 224.

No. 07–5681. JONES *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 403.

No. 07–5787. EDMONDS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 955 So. 2d 787.

No. 07–5863. VAN *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 475 F. 3d 292.

No. 07–6008. STEVENS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 07–6056. HERTZEL *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 07–6235. CRAWFORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 487 F. 3d 1101.

No. 07–6248. JOHNSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 3d 278.

No. 07–6270. BRYDON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 472.

No. 07–6297. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 13.

No. 07–6313. BONNELL *v.* ISHEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 517.

No. 07–6439. SCHWARTZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 235 Fed. Appx. 914.

No. 07–6685. MCCULLEY *v.* SCHWENN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 475.

No. 07–6735. ELASALI *v.* SOARES ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–6736. STRONG *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6749. COBIN *v.* COBIN. Sup. Ct. S. C. Certiorari denied.

No. 07–6751. MURRY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 957 So. 2d 1180.

No. 07–6759. ARMENTERO *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 07–6761. BROWN *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–6769. SCHNABEL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–6777. WAVRA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 11.

No. 07–6782. ANDERSON *v.* TURNER. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 383.

No. 07–6799. DAVIS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 38 App. Div. 3d 1170, 832 N. Y. S. 2d 352.

No. 07–6806. ROSE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 07–6807. SHAH *v.* PATEL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 743.

No. 07–6809. TOLBERT *v.* JACKSON COUNTY, MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 224 S. W. 3d 65.

No. 07–6813. MCKINNEY *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 273 Neb. 346, 730 N. W. 2d 74.

No. 07–6819. VILLASENOR *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 07–6824. DIAZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–6838. TAYLOR *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6839. WASHINGTON *v.* ELLIOTT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 171.

No. 07–6841. TURNER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–6842. MAYS *v.* TROMBLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6844. ERICKSON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 524.

No. 07–6851. JAMISON *v.* WEST VALLEY CITY, UTAH, ET AL. C. A. 10th Cir. Certiorari denied.

No. 07–6852. EL MANSOURI *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 713.

No. 07–6854. PIKE *v.* BISSONETTE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT FRAMINGHAM. C. A. 1st Cir. Certiorari denied. Reported below: 492 F. 3d 61.

No. 07–6858. WILSON *v.* GILES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6863. ALTERGOTT *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6866. ADAMS *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6868. YOUNG *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6869. REDPATH *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6872. CREAMER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 07–6875. DAVIS *v.* SOWERS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 310.

No. 07–6876. VINCENT *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 137 N. M. 462, 112 P. 3d 1119.

No. 07–6881. SELENSKY *v.* MOBILE INFIRMARY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 814.

No. 07–6885. THOMPSON *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–6895. EMERSON *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 499.

No. 07–6896. PEOPLES *v.* VEGCH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6897. LUCKY *v.* HOUSTON POLICE DEPARTMENT. C. A. D. C. Cir. Certiorari denied. Reported below: 232 Fed. Appx. 5.

No. 07–6898. JAMES *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 230 Fed. Appx. 195.

No. 07–6902. VAUGHN *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 338 Mont. 97, 164 P. 3d 873.

No. 07–6903. NICKERSON *v.* DOUGHTY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–6906. EDMOND *v.* KELLY, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 07–6911. KIRKLAND *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–6912. JACKSON *v.* UNKNOWN PARTY. C. A. 6th Cir. Certiorari denied.

No. 07–6917. ABILEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 472, 161 P. 3d 58.

No. 07–6918. BEAVER *v.* WELCH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6919. BARKER *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6975. PRAPHATANANDA *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 482.

No. 07–6976. HILSKA *v.* SUTER, CLERK, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 07–6979. PARIAG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 341.

No. 07–7018. POLLARD *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 07–7031. CARNEY *v.* FABIAN, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 487 F. 3d 1094.

No. 07–7036. TATE *v.* ENDICOTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–7050. REID *v.* NORTH CAROLINA DEPARTMENT OF CORRECTION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 187.

No. 07–7057. TANNER *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 493 F. 3d 1135.

No. 07–7058. WILLIAMS *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 960 So. 2d 506.

No. 07–7078. GREENE *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied.

No. 07–7081. SIMMONS *v.* WILSON ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–7110. BANDA-ZARATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 344.

No. 07–7153. FARRAR *v.* HATHAWAY, CORRECTIONAL ADMINISTRATOR, BERTIE CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 979.

No. 07–7155. HUTCHINSON *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 07–7196. MOORE *v.* BERTSCH, INDIVIDUALLY, AND IN HER OFFICIAL CAPACITY AS DIRECTOR, NORTH DAKOTA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 07–7197. SHERRILL *v.* CROSS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 07–7228. BELL *v.* HUGHES. C. A. D. C. Cir. Certiorari denied.

No. 07–7240. VOGELSANG *v.* SUBIA, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7331. MARSHALL *v.* GEREN, SECRETARY OF THE ARMY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 72.

No. 07–7337. WILLIS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 304.

No. 07–7376. REYES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–7385. BRAITHWAITE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 242 Fed. Appx. 765.

No. 07–7393. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 495 F. 3d 536.

No. 07–7394. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 247 Fed. Appx. 321.

No. 07–7395. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 353.

No. 07–7396. ALMANZA-SILVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 972.

No. 07–7399. MCLEOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 274.

No. 07–7400. VIVERO-RENTERIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7401. KNAPP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7402. MARTINEZ, AKA BURCIAGA-OROSCO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 808.

No. 07–7414. COLEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 170.

No. 07–7415. ELRAWY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 302.

No. 07–7416. CALLAHAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7419. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 311.

No. 07–7423. TEJEDA-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 258.

No. 07–7424. WINTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 665.

No. 07–7425. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 88.

No. 07–7433. SKYERS *v.* JETER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 362.

No. 07–7436. MOLINA MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 496 F. 3d 387.

No. 07–7437. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 676.

No. 07–7447. HOLSEY *v.* HALL, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 281 Ga. 809, 642 S. E. 2d 561.

No. 07–7449. KELLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 274.

No. 07–7450. LOPEZ-GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 402.

No. 07–7452. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 157.

No. 07–7453. RIVERA-ARREAGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 567.

No. 07–7459. MACIAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 07–7469. CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–7474. AMOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 226.

No. 07–7476. WRIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–7478. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 981.

No. 07–7484. WOODEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 243.

No. 07–7488. PORTES, AKA DIAZ PENA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 505 F. 3d 21.

No. 07–7490. YAMBA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 506 F. 3d 251.

No. 07–7493. WARMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7503. BOLANOS-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 492 F. 3d 1140.

No. 07–280. EICHORN ET AL. *v.* AT&T CORP. ET AL. C. A. 3d Cir. Motion of AARP et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion and this petition. Reported below: 484 F. 3d 644.

No. 07–284. MARYLAND *v.* PAULINO. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 399 Md. 341, 924 A. 2d 308.

No. 07–415. COLE *v.* UNITED PARCEL SERVICE, INC. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 211 Fed. Appx. 584.

No. 07–437. MICHIGAN *v.* FRAZIER. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 478 Mich. 231, 733 N. W. 2d 713.

No. 07–439. McDermott *v.* Boehner. C. A. D. C. Cir. Certiorari denied. The Chief Justice took no part in the consideration or decision of this motion and this petition. Reported below: 484 F. 3d 573.

No. 07–6913. Waters *v.* Vanosdel et al. C. A. 9th Cir. Certiorari denied. Justice Breyer took no part in the consideration or decision of this petition.

No. 07–7464. McClanahan *v.* United States. C. A. 9th Cir. Certiorari denied. Justice Breyer took no part in the consideration or decision of this petition.

Rehearing Denied

No. 06–1148. Coleman *v.* Jacks, *ante*, p. 809;

No. 06–1450. Sambrano et ux. *v.* Heritage Trails Homeowners Assn., *ante*, p. 812;

No. 06–1484. Klepper *v.* City of Page, Arizona, et al., *ante*, p. 814;

No. 06–1546. Lansing *v.* Fairfax Hospital, *ante*, p. 816;

No. 06–1627. Baird *v.* BNSF Railway Co., *ante*, p. 821;

No. 06–1678. Undseth *v.* Undseth et al., *ante*, p. 824;

No. 06–10611. Archer *v.* United States, *ante*, p. 829;

No. 06–10844. Teacher *v.* Merit Systems Protection Board et al., *ante*, p. 830;

No. 06–11050. Rone *v.* Booker, Warden, *ante*, p. 834;

No. 06–11073. Swain *v.* Florida, *ante*, p. 835;

No. 06–11183. Alexander *v.* Parker, Superintendent, Putnamville Correctional Facility, *ante*, p. 838;

No. 06–11332. McCauley *v.* Jeffreys, Warden, *ante*, p. 842;

No. 06–11432. Bailey *v.* Carroll, Warden, *ante*, p. 846;

No. 06–11678. Schreiber *v.* Ault, Warden, *ante*, p. 857;

No. 06–11764. In re Coyner, *ante*, p. 808;

No. 06–11786. Perry *v.* Compton, Warden, *ante*, p. 864;

No. 06–11969. Woods et ux. *v.* United States Postal Service, *ante*, p. 876;

No. 06–12031. In re Roman, *ante*, p. 808;

No. 06–12093. In re Rylee, *ante*, p. 808;

No. 07–121. Matlaw *v.* Hug et al., *ante*, p. 890;

No. 07–5055. Simpson *v.* United States, *ante*, p. 895;

No. 07–5083. McLean *v.* United States, *ante*, p. 896;

No. 07–5108. HENRY *v.* PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW, *ante*, p. 898;

No. 07–5124. IN RE MURRAY, *ante*, p. 808;

No. 07–5226. NASH *v.* NEW JERSEY, *ante*, p. 905;

No. 07–5238. BLAIR *v.* UNITED STATES, *ante*, p. 906;

No. 07–5284. QUINLAN *v.* UNITED STATES, *ante*, p. 908;

No. 07–5288. SMITH *v.* LAFLER, WARDEN, *ante*, p. 909;

No. 07–5327. L. R. *v.* KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES ET AL., *ante*, p. 911;

No. 07–5330. RODDY *v.* WEST VIRGINIA ET AL., *ante*, p. 911;

No. 07–5353. OPARAJI *v.* UNITED FEDERATION OF TEACHERS, *ante*, p. 912;

No. 07–5459. IN RE GRISSON, *ante*, p. 809;

No. 07–5476. PETIT-FRERE *v.* UNITED STATES, *ante*, p. 919;

No. 07–5586. BROWN *v.* UNITED STATES, *ante*, p. 924;

No. 07–5640. VIDALES *v.* ABBOTT, ATTORNEY GENERAL OF TEXAS, ET AL., *ante*, p. 955;

No. 07–5652. BRANHAM *v.* MCCONNELL ET AL., *ante*, p. 955;

No. 07–5674. WINNINGHAM *v.* UNITED STATES ET AL., *ante*, p. 927;

No. 07–5685. WEAVER *v.* EMORY UNIVERSITY, *ante*, p. 956;

No. 07–5749. OSBORNE *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION, ET AL., *ante*, p. 957;

No. 07–5759. TUNSTALL *v.* YENTES ET AL., *ante*, p. 957;

No. 07–5852. RHOADES *v.* CUYAHOGA METROPOLITAN HOUSING AUTHORITY, *ante*, p. 977;

No. 07–5860. MORRIS *v.* DEWALT, WARDEN, *ante*, p. 960;

No. 07–5869. CORLEY *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 960;

No. 07–5912. DURASEVIC ET UX. *v.* KEISLER, ACTING ATTORNEY GENERAL, *ante*, p. 960;

No. 07–5972. COULTER *v.* MCCANN, WARDEN, *ante*, p. 961;

No. 07–6089. IN RE TEMPLE, *ante*, p. 807;

No. 07–6415. BERRY *v.* UNITED STATES, *ante*, p. 970; and

No. 07–6558. TAYLOR *v.* UNITED STATES, *ante*, p. 983. Petitions for rehearing denied.

No. 06–10988. FARRIS *v.* STANDARD MORTGAGE ET AL., *ante*, p. 942. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

DECEMBER 5, 2007

Miscellaneous Order

No. 07–395 (07A451). ARTHUR *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, granted pending the disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

DECEMBER 7, 2007

Certiorari Granted

No. 06–1666. MUNAF ET AL. *v.* GEREN, SECRETARY OF THE ARMY, ET AL.; and

No. 07–394. GEREN, SECRETARY OF THE ARMY, ET AL. *v.* OMAR ET AL., NEXT FRIENDS OF OMAR. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 06–1666, 482 F. 3d 582; No. 07–394, 479 F. 3d 1.

No. 06–11429. BURGESS *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 478 F. 3d 658.

No. 07–208. INDIANA *v.* EDWARDS. Sup. Ct. Ind. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?" Reported below: 866 N. E. 2d 252.

No. 07–312. FLORIDA DEPARTMENT OF REVENUE *v.* PICCADILLY CAFETERIAS, INC. C. A. 11th Cir. Certiorari granted. Reported below: 484 F. 3d 1299.

No. 07–455. UNITED STATES *v.* RESSAM. C. A. 9th Cir. Certiorari granted. Reported below: 474 F. 3d 597.

No. 07–480. HUBER *v.* WAL-MART STORES, INC. C. A. 8th Cir. Certiorari granted limited to Question 1 presented by the

petition. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 486 F. 3d 480.

DECEMBER 10, 2007

Certiorari Granted—Vacated and Remanded

No. 07–6032. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bowles* v. *Russell*, 551 U. S. 205 (2007).

Miscellaneous Orders

No. 07M25. THOMAS *v.* WATSON, WARDEN; and
No. 07M27. CREPEAU *v.* DEPARTMENT OF LABOR. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 07M26. ABELE *v.* TOLBERT ET AL. Motion of petitioner for leave to proceed as a veteran denied.

No. 06–937. QUANTA COMPUTER, INC., ET AL. *v.* LG ELECTRONICS, INC. C. A. Fed. Cir. [Certiorari granted, 551 U. S. 1187.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–1082. VIRGINIA *v.* MOORE. Sup. Ct. Va. [Certiorari granted, 551 U. S. 1187.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–5439. BAZE ET AL. *v.* REES, COMMISSIONER, KENTUCKY DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Ky. [Certiorari granted, 551 U. S. 1192 and *ante*, p. 945.] Motion of petitioners for leave to file volume IV of the joint appendix under seal granted.

No. 07–7679. IN RE DIAZ; and
No. 07–7704. IN RE WILLIAMS. Petitions for writs of habeas corpus denied.

Certiorari Denied

No. 06–1475. HALE ET AL. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 476 F. 3d 694.

No. 07–73. DAYAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 476 F. 3d 111.

No. 07–141. PUBLIC CITIZEN *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied. Reported below: 486 F. 3d 1342.

No. 07–155. PACIFIC GAS & ELECTRIC CO. ET AL. *v.* BONNEVILLE POWER ADMINISTRATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 3d 908.

No. 07–159. CITY OF NEWPORT NEWS, VIRGINIA, ET AL. *v.* SCIOLINO. C. A. 4th Cir. Certiorari denied. Reported below: 480 F. 3d 642.

No. 07–187. DAVENPORT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 3d 321.

No. 07–285. AMERICAN FUTURE SYSTEMS, INC., DBA PROGRESSIVE BUSINESS PUBLICATIONS *v.* BETTER BUSINESS BUREAU OF EASTERN PENNSYLVANIA ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 592 Pa. 66, 923 A. 2d 389.

No. 07–353. SANCHEZ ET AL. *v.* TRIPLE-S MANAGEMENT, CORP., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 492 F. 3d 1.

No. 07–413. CRAWFORD *v.* GREAT AMERICAN CASH ADVANCE, INC. Ct. App. Ga. Certiorari denied. Reported below: 284 Ga. App. 690, 644 S. E. 2d 522.

No. 07–467. ADAMS *v.* CALIFORNIA DEPARTMENT OF HEALTH SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 3d 684.

No. 07–469. SARIOL *v.* FLORIDA CRYSTALS CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 490 F. 3d 1277.

No. 07–479. HUGH JOHNSON ENTERPRISES, INC., DBA CLUB HAREM *v.* CITY OF WINTER PARK, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 848.

No. 07–503. RUSEV ET UX. *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 634.

No. 07–519. TRANSPORTADORA EGOBA, S. A. DE C. V. *v.* ARREDONDO ET AL. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 217 S. W. 3d 603.

No. 07–554. BONILLA ET AL. *v.* BAKER CONCRETE CONSTRUCTION, INC. C. A. 11th Cir. Certiorari denied. Reported below: 487 F. 3d 1340.

No. 07–5379. LINDSEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 911 A. 2d 824.

No. 07–5739. LUCIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 410.

No. 07–5762. HEREDIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 483 F. 3d 913.

No. 07–5782. LOGGINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 3d 977.

No. 07–5849. MENDES *v.* UNITED STATES; and
No. 07–5948. CUSTER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–6016. BROOKS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 973 So. 2d 380.

No. 07–6351. WALKER *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 972 So. 2d 737.

No. 07–6909. HAVENS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6921. GRANDOIT *v.* LIBERTY MUTUAL INSURANCE CO. App. Ct. Mass. Certiorari denied. Reported below: 68 Mass. App. 1113, 863 N. E. 2d 95.

No. 07–6924. FOUST *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–6926. FOOTE *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 492 F. 3d 1026.

No. 07–6930. GLEAN *v.* BATTLE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–6933. MARTINEZ-GONZALEZ *v.* PUERTO RICO. Sup. Ct. P. R. Certiorari denied.

No. 07–6937. STEELE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6939. SALAS *v.* GEORGIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Ga. Certiorari denied.

No. 07–6940. PAQUETTE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–6944. WEST *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–6950. PORTER *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–6952. ROLLE *v.* DILMORE ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6970. POLLY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–6983. KING *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–7025. GHEE *v.* PANOS, DEKALB COUNTY STATE COURT JUDGE. Sup. Ct. Ga. Certiorari denied.

No. 07–7051. VANDERBILT *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 661.

No. 07–7069. ANGELO *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 234.

No. 07–7109. BEDFORD *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 315.

No. 07–7146. GEFFKEN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–7181. COLON *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 449 Mass. 207, 866 N. E. 2d 412.

No. 07–7184. WELSH *v.* FRANK, INTERIM DIRECTOR, HAWAII DEPARTMENT OF PUBLIC SAFETY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 746.

No. 07–7207. CESAL *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–7212. BATES *v.* HILL, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. Ct. App. Ore. Certiorari denied.

No. 07–7216. SYKES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 900.

No. 07–7219. BOSTON *v.* MCCANN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 603.

No. 07–7226. JONES *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7227. PALACIOS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–7229. SPILLER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 282 Ga. 351, 647 S. E. 2d 64.

No. 07–7256. SMITH *v.* AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, ILLINOIS COUNCIL 31. C. A. 7th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 804.

No. 07–7267. JACOBS *v.* LOONEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 10.

No. 07–7268. PETERSON *v.* JAMES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 363.

No. 07–7274. VAN SWAIT *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7294. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–7362. STEWARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 332.

No. 07–7383. PRICE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–7406. PETTIGREW *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 07–7413. MCDONALD *v.* SMITH, SUPERINTENDENT, CASWELL CORRECTIONAL CENTER. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 99.

No. 07–7443. BOYD *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 222 Fed. Appx. 997.

No. 07–7455. WEBSTER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 40 App. Div. 3d 1137, 834 N. Y. S. 2d 880.

No. 07–7466. DELESTON *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 169.

No. 07–7485. WASHINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 754.

No. 07–7498. RAZZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 844.

No. 07–7500. RANGEL-TREVINO *v.* UNITED STATES (Reported below: 249 Fed. Appx. 336); MOLINA-CANO *v.* UNITED STATES (249 Fed. Appx. 330); GALICIA, AKA GALICIA-ROMERO *v.* UNITED STATES (249 Fed. Appx. 357); SANCHEZ-ROSAS *v.* UNITED STATES (250 Fed. Appx. 16); ALCARAZ-GUIZAR, AKA ALCARAZ, AKA GUIZAR ALCARAZ *v.* UNITED STATES (249 Fed. Appx. 376); MARTINEZ-LOPEZ *v.* UNITED STATES (249 Fed. Appx. 375); GUTIERREZ-FUENTES *v.* UNITED STATES (249 Fed. Appx. 374); ROBLES-GARCIA *v.* UNITED STATES (249 Fed. Appx. 387); HINOJOSA-CASTILLO, AKA HIMOJOSA *v.* UNITED STATES (249 Fed. Appx. 371); MENDOZA-ALVINO, AKA MENDOZA *v.* UNITED STATES (249 Fed. Appx. 372); GARCIA-SIERRA *v.* UNITED STATES (250 Fed. Appx. 15); LOPEZ-GUZMAN, AKA HERNANDEZ-MONTERO *v.*

UNITED STATES (249 Fed. Appx. 369); ESPINOSA-HERNANDEZ, AKA ESPINOSA *v.* UNITED STATES (250 Fed. Appx. 638); TIJERINA-RODRIGUEZ *v.* UNITED STATES (250 Fed. Appx. 656); CASTILLO-MEDINA *v.* UNITED STATES (251 Fed. Appx. 301); DELGADO-SALAZAR *v.* UNITED STATES (252 Fed. Appx. 596); and AVITU-RAMOS *v.* UNITED STATES (252 Fed. Appx. 625). C. A. 5th Cir. Certiorari denied.

No. 07–7501. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7506. LIVINGSTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 224 Fed. Appx. 188.

No. 07–7508. NEIRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 285.

No. 07–7509. SAMUELS, AKA LEWIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 493 F. 3d 1187.

No. 07–7516. HUDSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 491 F. 3d 590.

No. 07–7518. HUFF *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 832.

No. 07–7519. GARNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 168.

No. 07–7521. GORDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 685.

No. 07–7522. HAUN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 494 F. 3d 1006.

No. 07–7529. ABDULLAH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–7534. VALLADARES-PUERTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 592.

No. 07–7537. CONTRERAS-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 295.

No. 07–7542. ESPINAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–7544. VALLES-JUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 312.

No. 07–7545. ZAMORANO-GRAJEDA *v.* UNITED STATES (Reported below: 235 Fed. Appx. 300); RODRIGUEZ-MUNOZ *v.* UNITED STATES (235 Fed. Appx. 306); REYES-BOCANEGRA *v.* UNITED STATES (235 Fed. Appx. 308); PAINTER-VARGAS *v.* UNITED STATES (235 Fed. Appx. 306); LUNA-CASTRO, AKA LUNA-PEREZ *v.* UNITED STATES (235 Fed. Appx. 286); and IBARRA-REGIS *v.* UNITED STATES (235 Fed. Appx. 299). C. A. 5th Cir. Certiorari denied.

No. 07–7546. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 235 Fed. Appx. 925.

No. 07–7547. AMAYA-RODRIGUEZ *v.* UNITED STATES (Reported below: 235 Fed. Appx. 309); ESPINOZA-SARAVIA *v.* UNITED STATES (235 Fed. Appx. 288); IBARRA-DE LA CRUZ *v.* UNITED STATES (235 Fed. Appx. 307); MARES-MIRANDA *v.* UNITED STATES (235 Fed. Appx. 312); MUNOZ-FELIX *v.* UNITED STATES (235 Fed. Appx. 275); PEREZ-RAYOS *v.* UNITED STATES (235 Fed. Appx. 290); RANGEL-CONTRERAS *v.* UNITED STATES (235 Fed. Appx. 283); RENDON-LOPEZ *v.* UNITED STATES (235 Fed. Appx. 287); REYES-TORRES *v.* UNITED STATES (235 Fed. Appx. 278); SAAVEDRA-ROJAS, AKA CORDOVA-VALDEZ *v.* UNITED STATES (235 Fed. Appx. 300); TADEO-MARES *v.* UNITED STATES (235 Fed. Appx. 275); and VELAZQUEZ-PEREZ, AKA SANCHEZ-MORALES *v.* UNITED STATES (235 Fed. Appx. 298). C. A. 5th Cir. Certiorari denied.

No. 07–7549. OCHOA-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 305.

No. 07–7551. JEFFREYS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 195.

No. 07–7552. SIMONSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 823.

No. 07–7553. SOLIS-ARZAGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 288.

No. 07–7554. MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 289.

No. 07–7555. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 162.

No. 07–7558. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 3d 949.

No. 07–7559. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–7563. OXENDINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 852.

No. 07–7566. LANG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 3d 348.

No. 07–7568. MENDEZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 108.

No. 07–7569. PADILLA-PEREZ, AKA PADILLA PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 295.

No. 07–7570. MELTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 192.

No. 07–7571. MENERA-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 674.

No. 07–7578. MORTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 798.

No. 07–7596. EDGERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 974.

No. 07–7600. CARTWRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 438.

No. 07–7604. HENOUD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 308.

No. 07–7605. FLORES-SOTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 273.

No. 07–7606. HOFFMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 229 Fed. Appx. 157.

No. 07–7607. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 284.

No. 07–7608. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 285.

No. 07–7609. HICIANO-AMARO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–7610. GONZALEZ-NINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 296.

No. 07–7613. WILLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 527.

No. 07–7620. MOSER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 138.

No. 07–7622. NASH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 482 F. 3d 1209.

No. 07–199. MARSHALL, WARDEN *v.* HENRY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 224 Fed. Appx. 635.

Rehearing Denied

No. 06–1592. SULLIVAN *v.* PENDER COUNTY, NORTH CAROLINA, ET AL., *ante*, p. 819;

No. 06–11132. LUBOWA *v.* KEISLER, ACTING ATTORNEY GENERAL, *ante*, p. 836;

No. 06–11296. PIN *v.* ROBINSON, WARDEN, *ante*, p. 841;

No. 06–11299. BOWLES *v.* BELL, WARDEN, *ante*, p. 841;

No. 06–11306. MORGAN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 842;

No. 06–11562. JOHNSON *v.* SUBURBAN MOBILITY AUTHORITY REGIONAL TRANSPORTATION ET AL., *ante*, p. 851;

No. 06–11718. FAULKNER *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 974;

No. 06–11727. EVANS *v.* TERMINIX INTERNATIONAL CO., *ante*, p. 860;

No. 06–11820. DEAVER *v.* UNITED STATES, *ante*, p. 867;

No. 06–11855. GROVES *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL., *ante*, p. 869;

No. 06–11935. BELL *v.* UNITED STATES, *ante*, p. 874;

No. 06–12114. DOGGETT *v.* UNITED STATES, *ante*, p. 884;

No. 07–209. PO KEE WONG *v.* BOSTON RETIREMENT BOARD, *ante*, p. 975;

No. 07–5030. MARCH *v.* UNITED STATES, *ante*, p. 894;

No. 07–5165. JOHNSON *v.* CELIS ET AL., *ante*, p. 901;

No. 07–5245. LEWIS *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, *ante*, p. 906;

No. 07–5259. IN RE TOLIVER, *ante*, p. 807;

No. 07–5296. MONROE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 909;

No. 07–5357. METCALF *v.* UNITED STATES, *ante*, p. 912;

No. 07–5435. GRICE *v.* UNITED STATES, *ante*, p. 917;

No. 07–5470. OPARAJI *v.* NEW YORK CITY DEPARTMENT OF EDUCATION ET AL., *ante*, p. 918;

No. 07–5706. JORDAN *v.* UNITED STATES, *ante*, p. 929;

No. 07–5777. MAGAZINE *v.* WHITE, WARDEN, ET AL., *ante*, p. 930;

No. 07–5936. WITMER *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, *ante*, p. 979;

No. 07–5937. WELLS *v.* A–1 PROPERTY MANAGEMENT, *ante*, p. 979;

No. 07–5955. KAUFMAN *v.* COMMISSION FOR LAWYER DISCIPLINE, *ante*, p. 935;

No. 07–6306. TERAN *v.* UNITED STATES, *ante*, p. 1000;

No. 07–6321. LUNDY *v.* UNITED STATES, *ante*, p. 968;

No. 07–6576. BIGGS *v.* UNITED STATES, *ante*, p. 984; and

No. 07–6748. JONES *v.* UNITED STATES, *ante*, p. 1004. Petitions for rehearing denied.

DECEMBER 27, 2007

Dismissal Under Rule 46

No. 06–1346. ALI *v.* ACHIM ET AL. C. A. 7th Cir. [Certiorari granted, 551 U. S. 1188.] Writ of certiorari dismissed under this Court's Rule 46.2.

DECEMBER 28, 2007

Dismissal Under Rule 46

No. 06–1265. KLEIN & CO. FUTURES, INC. *v.* BOARD OF TRADE OF THE CITY OF NEW YORK ET AL. C. A. 2d Cir. [Certiorari

granted, 550 U. S. 956.*] Writ of certiorari dismissed under this Court's Rule 46.1.

JANUARY 4, 2008

Miscellaneous Orders

No. 06–1082. VIRGINIA *v.* MOORE. Sup. Ct. Va. [Certiorari granted, 551 U. S. 1187.] Motion of American Bar Association for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 07–21. CRAWFORD ET AL. *v.* MARION COUNTY ELECTION BOARD ET AL.; and

No. 07–25. INDIANA DEMOCRATIC PARTY ET AL. *v.* ROKITA, SECRETARY OF STATE OF INDIANA, ET AL. C. A. 7th Cir. [Certiorari granted, 551 U. S. 1192.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–5439. BAZE ET AL. *v.* REES, COMMISSIONER, KENTUCKY DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Ky. [Certiorari granted, 551 U. S. 1192 and *ante*, p. 945.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Certiorari Granted

No. 06–7517. IRIZARRY *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Petitioner's brief is to be filed on or before Thursday, February 14, 2008. Respondent's brief is to be filed on or before Wednesday, March 12, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 458 F. 3d 1208.

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*[REPORTER'S NOTE: Argued October 29, 2007. *Drew S. Days III* argued the cause for petitioner. With him on the briefs were *Beth S. Brinkmann*, *Seth M. Galanter*, *Jeffrey Plotkin*, and *Lorraine Bellard*.

Malcolm L. Stewart argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement*, *Deputy Solicitor General Hungar*, and *Harold Hardman*.

Andrew J. Pincus argued the cause for respondents. With him on the brief were *Andrew H. Schapiro*, *Howard R. Hawkins, Jr.*, *Edmund R. Schroeder*, and *Jason Jurgens*.

Mark D. Young filed a brief for the Futures Industry Association, Inc., as *amicus curiae* urging reversal.]

No. 07–210. BRIDGE ET AL. *v.* PHOENIX BOND & INDEMNITY CO. ET AL. C. A. 7th Cir. Certiorari granted limited to the following question: "Whether reliance is a required element of a Racketeer Influenced and Corrupt Organizations Act claim predicated on mail fraud and, if it is, whether that reliance must be by the plaintiff." Petitioners' brief is to be filed on or before Thursday, February 14, 2008. Respondents' brief is to be filed on or before Wednesday, March 12, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 477 F. 3d 928.

No. 07–330. GREENLAW *v.* UNITED STATES. C. A. 8th Cir. Certiorari granted. Petitioner's brief is to be filed on or before Thursday, February 14, 2008. Respondent's brief is to be filed on or before Wednesday, March 12, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 481 F. 3d 601.

No. 07–343. KENNEDY *v.* LOUISIANA. Sup. Ct. La. Motion of Louisiana Public Defender Offices in Parishes Impacted by Hurricanes Katrina and Rita for leave to file a brief as *amici curiae* granted. Certiorari granted. Petitioner's brief is to be filed on or before Thursday, February 14, 2008. Respondent's brief is to be filed on or before Wednesday, March 12, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 957 So. 2d 757.

No. 07–411. PLAINS COMMERCE BANK *v.* LONG FAMILY LAND & CATTLE CO., INC., ET AL. C. A. 8th Cir. Certiorari granted. Petitioner's brief is to be filed on or before Thursday, February 14, 2008. Respondents' brief is to be filed on or before Wednesday, March 12, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 491 F. 3d 878.

No. 07–552. SPRINT COMMUNICATIONS CO., L. P., ET AL. *v.* APCC SERVICES, INC., ET AL. C. A. D. C. Cir. Certiorari granted. Petitioners' brief is to be filed on or before Thursday, February 14, 2008. Respondents' brief is to be filed on or before Wednesday, March 12, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 489 F. 3d 1249.

JANUARY 7, 2008

Affirmed for Absence of Quorum

No. 07–7894. AWALA *v.* FIVE UNITED STATES SUPREME COURT JUSTICES ET AL. C. A. 6th Cir. THE CHIEF JUSTICE, JUSTICE KENNEDY, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE ALITO took no part in the consideration or decision of this petition. Because of this absence of a quorum, 28 U. S. C. § 1, and since a majority of the qualified Justices are of the opinion that the case cannot be heard and determined at the next Term of Court, the judgment is affirmed under 28 U. S. C. § 2109, which provides that under these circumstances "the court shall enter its order affirming the judgment of the same court from which the case was brought for review with the same effect as upon affirmance by an equally divided court."

Vacated and Remanded After Certiorari Granted. (See No. 07–110, *ante*, p. 117.)

Certiorari Granted—Reversed and Remanded. (See No. 07–212, *ante*, p. 120.)

Certiorari Granted—Vacated and Remanded.

No. 05–11144. DUHON *v.* UNITED STATES. C. A. 5th Cir. Reported below: 440 F. 3d 711;

No. 05–11308. ROWAN *v.* UNITED STATES. C. A. 5th Cir. Reported below: 169 Fed. Appx. 395;

No. 06–6079. GOODY *v.* UNITED STATES. C. A. 8th Cir. Reported below: 442 F. 3d 1132;

No. 06–7779. WALLACE *v.* UNITED STATES. C. A. 7th Cir. Reported below: 458 F. 3d 606;

No. 06–7784. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Reported below: 458 F. 3d 491;

No. 06–8086. MCDONALD *v.* UNITED STATES. C. A. 8th Cir. Reported below: 461 F. 3d 948;

No. 06–8498. BEAL *v.* UNITED STATES. C. A. 8th Cir. Reported below: 463 F. 3d 834;

No. 06–10045. GRINBERGS *v.* UNITED STATES. C. A. 8th Cir. Reported below: 470 F. 3d 758;

No. 06–11660. FUNK *v.* UNITED STATES. C. A. 6th Cir. Reported below: 477 F. 3d 421;

No. 06–11903. KANE *v.* UNITED STATES. C. A. 8th Cir. Reported below: 470 F. 3d 1277;

No. 06–12034. TRUPIN *v.* UNITED STATES. C. A. 2d Cir. Reported below: 475 F. 3d 71;

No. 07–5051. GARATE *v.* UNITED STATES. C. A. 8th Cir. Reported below: 482 F. 3d 1013;

No. 07–5315. MEDINA *v.* UNITED STATES. C. A. 4th Cir. Reported below: 221 Fed. Appx. 231;

No. 07–5412. GONZALES SANCHEZ, AKA GONZALES CAMPOS *v.* UNITED STATES. C. A. 5th Cir. Reported below: 484 F. 3d 803;

No. 07–5448. WARFIELD *v.* UNITED STATES. C. A. 5th Cir. Reported below: 225 Fed. Appx. 241;

No. 07–5497. PYLES *v.* UNITED STATES. C. A. 4th Cir. Reported below: 482 F. 3d 282;

No. 07–5581. ROBERTS *v.* UNITED STATES. C. A. 5th Cir. Reported below: 247 Fed. Appx. 465;

No. 07–5589. GENTILE *v.* UNITED STATES. C. A. 8th Cir. Reported below: 473 F. 3d 888;

No. 07–5743. ROMERO-CANDELARIA *v.* UNITED STATES. C. A. 4th Cir. Reported below: 225 Fed. Appx. 122;

No. 07–5761. GENTILE *v.* UNITED STATES. C. A. 8th Cir. Reported below: 473 F. 3d 888;

No. 07–6046. PEPPER *v.* UNITED STATES. C. A. 8th Cir. Reported below: 486 F. 3d 408;

No. 07–6142. MILLER *v.* UNITED STATES. C. A. 8th Cir. Reported below: 484 F. 3d 964;

No. 07–6353. GARCIA-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Reported below: 229 Fed. Appx. 341;

No. 07–6387. BARAJAS *v.* UNITED STATES. C. A. 5th Cir. Reported below: 243 Fed. Appx. 802;

No. 07–6503. RODRIGUEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Reported below: 238 Fed. Appx. 16;

No. 07–6513. BONILLA-LEMUS *v.* UNITED STATES. C. A. 5th Cir. Reported below: 243 Fed. Appx. 798;

No. 07–6561. SHARPE *v.* UNITED STATES. C. A. 4th Cir. Reported below: 241 Fed. Appx. 131;

No. 07–6727. FEEMSTER *v.* UNITED STATES. C. A. 8th Cir. Reported below: 483 F. 3d 583; and

No. 07–7144. GOLDSMITH *v.* UNITED STATES. C. A. 8th Cir. Reported below: 486 F. 3d 404. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Gall* v. *United States*, *ante*, p. 38.

No. 05–11659. EURA *v.* UNITED STATES. C. A. 4th Cir. Reported below: 440 F. 3d 625;

No. 06–6222. CANADY *v.* UNITED STATES. C. A. 4th Cir. Reported below: 178 Fed. Appx. 213;

No. 06–6445. RANDOLPH *v.* UNITED STATES. C. A. 4th Cir. Reported below: 185 Fed. Appx. 255;

No. 06–6637. OLLIVIERRE, AKA BRIDGES *v.* UNITED STATES. C. A. 4th Cir. Reported below: 186 Fed. Appx. 355;

No. 06–7290. BARRON *v.* UNITED STATES. C. A. 3d Cir. Reported below: 181 Fed. Appx. 269;

No. 06–7591. LEE *v.* UNITED STATES. C. A. 8th Cir. Reported below: 451 F. 3d 914;

No. 06–7600. JOINTER *v.* UNITED STATES. C. A. 7th Cir. Reported below: 457 F. 3d 682;

No. 06–7774. TAFFERE *v.* UNITED STATES. C. A. 1st Cir. Reported below: 196 Fed. Appx. 1;

No. 06–7975. PANKEY *v.* UNITED STATES. C. A. 4th Cir. Reported below: 195 Fed. Appx. 130;

No. 06–8679. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Reported below: 192 Fed. Appx. 552;

No. 06–9210. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Reported below: 463 F. 3d 626;

No. 06–9749. MOORE *v.* UNITED STATES. C. A. 8th Cir. Reported below: 470 F. 3d 767;

No. 06–9864. SPEARS *v.* UNITED STATES. C. A. 8th Cir. Reported below: 469 F. 3d 1166;

No. 06–9998. ROMERO *v.* UNITED STATES. C. A. 7th Cir. Reported below: 469 F. 3d 1139;

No. 06–10277. MCGOWAN *v.* UNITED STATES. C. A. 11th Cir. Reported below: 211 Fed. Appx. 886;

No. 06–11525. JUDON *v.* UNITED STATES. C. A. 8th Cir. Reported below: 472 F. 3d 575;

No. 06–11979. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Reported below: 222 Fed. Appx. 531;

No. 06–12037. WELLS *v.* UNITED STATES. C. A. 3d Cir. Reported below: 216 Fed. Appx. 204;

No. 06–12046. LEATCH *v.* UNITED STATES. C. A. 5th Cir. Reported below: 482 F. 3d 790;

No. 07–5268. LEWIS *v.* UNITED STATES. C. A. 1st Cir.;

No. 07–5341. TROTTER *v.* UNITED STATES. C. A. 10th Cir. Reported below: 483 F. 3d 694;

No. 07–5429. PHO *v.* UNITED STATES. C. A. 1st Cir.;

No. 07–5543. DIAZ *v.* UNITED STATES. C. A. 2d Cir. Reported below: 223 Fed. Appx. 64;

No. 07–5588. FISHER *v.* UNITED STATES. C. A. 7th Cir. Reported below: 247 Fed. Appx. 802;

No. 07–5727. POWELL *v.* UNITED STATES. C. A. 4th Cir. Reported below: 225 Fed. Appx. 138;

No. 07–5894. TROTTER *v.* UNITED STATES. C. A. 10th Cir. Reported below: 483 F. 3d 694;

No. 07–6204. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Reported below: 240 Fed. Appx. 131;

No. 07–6388. BURTON *v.* UNITED STATES. C. A. 6th Cir.;

No. 07–6424. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Reported below: 480 F. 3d 878;

No. 07–6429. PETERSON *v.* UNITED STATES. C. A. 11th Cir. Reported below: 237 Fed. Appx. 439;

No. 07–6478. RIOS *v.* UNITED STATES. C. A. 7th Cir. Reported below: 224 Fed. Appx. 529;

No. 07–6578. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Reported below: 242 Fed. Appx. 971;

No. 07–6639. CAVETT *v.* UNITED STATES. C. A. 7th Cir. Reported below: 226 Fed. Appx. 611;

No. 07–6857. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Reported below: 486 F. 3d 377;

No. 07–7047. SKIPPER *v.* UNITED STATES. C. A. 4th Cir. Reported below: 233 Fed. Appx. 317;

No. 07–7297. WATKINS *v.* UNITED STATES. C. A. 8th Cir. Reported below: 486 F. 3d 458;

No. 07–7378. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Reported below: 241 Fed. Appx. 912;

No. 07–7428. SMITH *v.* UNITED STATES. C. A. 7th Cir. Reported below: 495 F. 3d 410;

No. 07–7640. JONES *v.* UNITED STATES. C. A. 8th Cir. Reported below: 493 F. 3d 938; and

No. 07–7684. CALDWELL *v.* UNITED STATES. C. A. 8th Cir. Reported below: 227 Fed. Appx. 539. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Kimbrough* v. *United States*, *ante*, p. 85.

No. 06–378. THURSTON *v.* UNITED STATES. C. A. 1st Cir. Reported below: 456 F. 3d 211;

No. 07–206. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Reported below: 486 F. 3d 822;

No. 07–294. LIVESAY *v.* UNITED STATES. C. A. 11th Cir. Reported below: 484 F. 3d 1324; and

No. 07–388. TAYLOR *v.* UNITED STATES. C. A. 1st Cir. Reported below: 499 F. 3d 94. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Gall* v. *United States*, *ante*, p. 38.

No. 06–1311. STRATTON *v.* UNITED STATES. C. A. 11th Cir. Reported below: 205 Fed. Appx. 791; and

No. 06–1474. YOUNG *v.* UNITED STATES. C. A. 3d Cir. Reported below: 215 Fed. Appx. 88. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Kimbrough* v. *United States*, *ante*, p. 85.

No. 06–8168. COTTO *v.* UNITED STATES. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Watson* v. *United States*, *ante*, p. 74. Reported below: 456 F. 3d 25.

No. 07–5704. COLLIER *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Solicitor General in his brief filed November 20, 2007.

Certiorari Dismissed

No. 07–6985. LYNN *v.* COLLIER ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–7405. MILES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 238 Fed. Appx. 978.

No. 07–7587. DALEY *v.* DRUG ENFORCEMENT ADMINISTRATION ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed

in forma pauperis denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–7722. HOLUB *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 07M28. VAN DETTA *v.* VAN DETTA ET AL.;

No. 07M30. SWANSON *v.* CHAPMAN, SECRETARY OF STATE OF ALABAMA;

No. 07M31. PATTON *v.* UNITED STATES;

No. 07M32. BARO *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS;

No. 07M34. HADDAD *v.* ADECCO USA, INC., ET AL.; and

No. 07M35. BARNETT *v.* MUKASEY, ATTORNEY GENERAL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 07M29. BENN *v.* WASHINGTON. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 07M33. LEWIS ET AL. *v.* MICROSOFT CORP. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 06–937. QUANTA COMPUTER, INC., ET AL. *v.* LG ELECTRONICS, INC. C. A. Fed. Cir. [Certiorari granted, 551 U. S. 1187.] Motion of petitioners for leave to file a reply brief under seal with redacted copies for the public record granted.

No. 06–1195. BOUMEDIENE ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL.; and

No. 06–1196. AL ODAH, NEXT FRIEND OF AL ODAH, ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. [Certiorari granted, 551 U. S. 1160.] Motion of petitioners in No. 06–1195 for leave to file a supplemental brief after argument granted. Motion of the Solicitor General for leave to file a supplemental brief after argument granted as to section 1 of the brief and denied as to section 2 of the brief.

No. 06–1717. RICHLIN SECURITY SERVICE CO. *v.* CHERTOFF, SECRETARY OF HOMELAND SECURITY. C. A. Fed. Cir. [Certio-

rari granted, *ante*, p. 1021.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 07–214. ALLISON ENGINE CO., INC., ET AL. *v.* UNITED STATES EX REL. SANDERS ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 989.] Motion of Continental Common, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 07–308. UNITED STATES *v.* CLINTWOOD ELKHORN MINING CO. ET AL. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 1061.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 07-373. CLARK COUNTY, NEVADA *v.* VACATION VILLAGE, INC., ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 07–7276. IN RE WILLIAMS;
No. 07–7738. IN RE TIMMONS;
No. 07–7761. IN RE BENAVIDEZ;
No. 07–7762. IN RE ALTMAN;
No. 07–7869. IN RE VILLASANA;
No. 07–7949. IN RE SMITH;
No. 07–7952. IN RE REYNOLDS;
No. 07–7953. IN RE NELSON;
No. 07–7954. IN RE RICKETTS;
No. 07–7955. IN RE SPILLER;
No. 07–7961. IN RE NEWBERN;
No. 07–7972. IN RE LONG;
No. 07–7984. IN RE WOODSON;
No. 07–8065. IN RE CARTER; and
No. 07–8136. IN RE FITCH. Petitions for writs of habeas corpus denied.

No. 07–7846. IN RE AWALA. Petition for writ of habeas corpus denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 07–7009. IN RE AL-MATIN;
No. 07–7312. IN RE FARSHIDI;
No. 07–7384. IN RE SHISINDAY; and
No. 07–7906. IN RE NICHOLS. Petitions for writs of mandamus denied.

No. 07–7041. IN RE WILLIAMS. Petition for writ of mandamus and/or prohibition denied.

No. 07–7162. IN RE BRAVO. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Denied

No. 05–9247. GRIJALVA-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 259.

No. 06–1188. TECK COMINCO METALS, LTD. *v.* PAKOOTAS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 452 F. 3d 1066.

No. 06–9937. LYONS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 204 Fed. Appx. 136.

No. 06–10559. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 3d 764.

No. 06–11080. VALERIO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 325.

No. 06–11238. DE LA ROSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 318.

No. 06–11413. MORGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 369.

No. 06–11435. MOSLEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 06–11620. GODSEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 274.

No. 07–44. NEW WEST MATERIALS, LLC, ET AL. *v.* INTERIOR BOARD OF LAND APPEALS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 385.

No. 07–68. DIAZ *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 586.

No. 07–86. CROSBY ET AL. *v.* MATHEWS. C. A. 11th Cir. Certiorari denied. Reported below: 480 F. 3d 1265.

No. 07–116. ADAMS ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 471 F. 3d 1321.

No. 07–129. ELDICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 837.

No. 07–189. KAHLE ET AL. *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 697.

No. 07–191. CONTEH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 374.

No. 07–197. DICKINSON ET AL. *v.* COLLIER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 477 F. 3d 1306.

No. 07–237. CEBALLO, AKA CEBALLOS *v.* MUKASEY, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 184 Fed. Appx. 28.

No. 07–241. MCFARLING *v.* MONSANTO CO. C. A. Fed. Cir. Certiorari denied. Reported below: 488 F. 3d 973.

No. 07–244. QIAN GAO *v.* MUKASEY, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 481 F. 3d 173.

No. 07–247. TREZZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–249. PALGUNADI *v.* MUKASEY, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 304.

No. 07–291. STANDING TOGETHER TO OPPOSE PARTIAL-BIRTH-ABORTION *v.* NORTHLAND FAMILY PLANNING CLINIC, INC.; and

No. 07–313. COX, ATTORNEY GENERAL OF MICHIGAN *v.* NORTHLAND FAMILY PLANNING CLINIC, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 3d 323.

No. 07–297. HILL ET AL. *v.* KEMP, CHAIRMAN, OKLAHOMA TAX COMMISSION, ET AL.; and

No. 07–488. KEMP, CHAIRMAN, OKLAHOMA TAX COMMISSION, ET AL. *v.* HILL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 478 F. 3d 1236.

No. 07–300. GREVE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 490 F. 3d 566.

No. 07–321. BERGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 3d 1080.

No. 07–338. STRUVE *v.* WICOMICO COUNTY, MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 172 Md. App. 726, 728.

No. 07–364. ALABAMA-TOMBIGBEE RIVERS COALITION ET AL. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 477 F. 3d 1250.

No. 07–393. BRODOWY ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 482 F. 3d 1370.

No. 07–405. WALTON *v.* UNITED STATES MARSHALS SERVICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 492 F. 3d 998.

No. 07–412. JONES *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 729 N. W. 2d 1.

No. 07–452. SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* LAMBRIGHT. C. A. 9th Cir. Certiorari denied. Reported below: 490 F. 3d 1103.

No. 07–458. BRYAN *v.* BELLSOUTH TELECOMMUNICATIONS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 492 F. 3d 231.

No. 07–459. FLINT *v.* DENNISON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 3d 816.

No. 07–472. POJILENKO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 222 Fed. Appx. 232.

No. 07–475. ESENSOY *v.* MCMILLAN ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–478. HARTMANN *v.* BURRIS, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 492 F. 3d 478.

No. 07–484. LEYKIN ET AL. *v.* AT&T CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 216 Fed. Appx. 14.

No. 07–486. IMPORT WAREHOUSE, INC., ET AL. *v.* BOLLORE S. A. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 349.

No. 07–491. PIONEER RANCH L. P. ET AL. *v.* MCDOUGALL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 494 F. 3d 571.

No. 07–500. MUSHTAQ *v.* SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY, ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 07–502. MANDOWSKY ET AL. *v.* DRESDNER BANK AG. C. A. 3d Cir. Certiorari denied. Reported below: 240 Fed. Appx. 980.

No. 07–504. HERRING, A MINOR CHILD, BY AND THROUGH HIS GUARDIAN AD LITEM FORT, ET AL. *v.* CITY OF COLORADO SPRINGS, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 854.

No. 07–507. OKLAHOMA ONCOLOGY & HEMATOLOGY, P. C., DBA CANCER CARE ASSOCIATES *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–508. MORGAN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MORGAN, DECEASED *v.* NORTH MISSISSIPPI MEDICAL CENTER, INC. C. A. 11th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 828.

No. 07–510. MORGANVILLE ENVIRONMENTAL CORP. *v.* DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–522. PETERSON BROTHERS CONSTRUCTION, INC., ET AL. *v.* LEXINGTON INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 474.

No. 07–523. MANN *v.* BOATRIGHT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A JEFFERSON COUNTY, COLORADO, FIRST JUDICIAL DISTRICT JUDGE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 477 F. 3d 1140.

No. 07–524. VAN POYCK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 961 So. 2d 220.

No. 07–531. GEORGE *v.* AERO LODGE 735. C. A. 6th Cir. Certiorari denied.

No. 07–532. LONDONO GUTIERREZ *v.* MUKASEY, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 07–534. CRAIG *v.* BRIGADIER ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–535. MATREALE *v.* NEW JERSEY DEPARTMENT OF MILITARY AFFAIRS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 3d 150.

No. 07–537. PARK MANOR, LTD. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 495 F. 3d 433.

No. 07–540. BROUSSARD *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–549. GANGULY *v.* SWISS AMERICAN SECURITIES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 229 Fed. Appx. 51.

No. 07–550. HEKYONG PAK *v.* ATTORNEY GRIEVANCE COMMISSION OF MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 400 Md. 567, 929 A. 2d 546.

No. 07–556. MORALES ET AL. *v.* JONES ET AL.; and
No. 07–655. JONES ET AL. *v.* MORALES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 494 F. 3d 590.

No. 07–557. YE ET AL. *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–558. MAFFEI ET AL. *v.* ROMAN CATHOLIC ARCHBISHOP OF BOSTON. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 449 Mass. 235, 867 N. E. 2d 300.

No. 07–559. AMES RENTAL PROPERTY ASSN. *v.* CITY OF AMES, IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 736 N. W. 2d 255.

No. 07–560. LOWE EXCAVATING CO. *v.* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150. Sup. Ct. Ill. Certiorari denied. Reported below: 225 Ill. 2d 456, 870 N. E. 2d 303.

No. 07–564. VAN ANDERSON *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 220 S. W. 3d 454.

No. 07–565. AUDUBON INDEMNITY INSURANCE GROUP *v.* MAES. Sup. Ct. N. M. Certiorari denied. Reported below: 142 N. M. 235, 164 P. 3d 934.

No. 07–568. EXPERIENCE HENDRIX, LLC, ET AL. *v.* JAMES MARSHALL HENDRIX FOUNDATION. C. A. 9th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 739.

No. 07–569. FITCH *v.* VALENTINE. Sup. Ct. Miss. Certiorari denied. Reported below: 959 So. 2d 1012.

No. 07–570. FPL ENERGY MAINE HYDRO LLC *v.* MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 926 A. 2d 1197.

No. 07–573. SPIEGEL *v.* VOLVO CARS NORTH AMERICA, L. L. C. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1224, 931 N. E. 2d 369.

No. 07–577. BLAKE *v.* UNIVERSITY OF MISSISSIPPI MEDICAL CENTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 864.

No. 07–583. SHUFLER *v.* SHUFLER. Sup. Ct. Del. Certiorari denied. Reported below: 929 A. 2d 784.

No. 07–584. OWENS ET AL. *v.* MONSANTO CO. C. A. 11th Cir. Certiorari denied. Reported below: 161 Fed. Appx. 875.

No. 07–587. COVENANT MEDIA OF SOUTH CAROLINA, LLC *v.* CITY OF NORTH CHARLESTON, SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 493 F. 3d 421.

No. 07–594. KAYYAL ET AL. *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 492.

No. 07–596. SEVAYEGA *v.* COLLINS, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION. C. A. 6th Cir. Certiorari denied.

No. 07–599. BARNO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–600. WILKINS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 710.

No. 07–617. AHUMADA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 653.

No. 07–622. FRICHTL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–624. HENDRICKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–627. MINCH ET AL. *v.* CITY OF CHICAGO, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 3d 294.

No. 07–628. ANDRIST *v.* MEDICAL COLLEGE OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 884.

No. 07–629. MENDEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 492 F. 3d 930.

No. 07–631. ROBERTS *v.* ALASKA ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 162 P. 3d 1214.

No. 07–638. WELLS *v.* TENNESSEE BOARD OF REGENTS ET AL. Sup. Ct. Tenn. Certiorari denied. Reported below: 231 S. W. 3d 912.

No. 07–641. BIDGOOD *v.* TOWN OF CAVENDISH, VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 181 Vt. 650, 927 A. 2d 790.

No. 07–642. FIRST COMMAND FINANCIAL PLANNING, INC., ET AL. *v.* MCPHAIL ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–669. HARDING GLASS CO., INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 1st Cir. Certiorari denied. Reported below: 500 F. 3d 1.

No. 07–671. MANN ET AL. *v.* FONG, NORTH DAKOTA TAX COMMISSIONER, ET AL. Sup. Ct. N. D. Certiorari denied. Reported below: 736 N. W. 2d 464.

No. 07–674. SUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–676. PAINTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 818.

No. 07–679. WILMSHURST *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 555.

No. 07–680. WE THE PEOPLE FOUNDATION FOR CONSTITUTIONAL EDUCATION, INC., ET AL. *v.* UNITED STATES ET AL.; and No. 07–681. SCHULZ *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 485 F. 3d 140.

No. 07–686. VILLEGAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 495 F. 3d 761.

No. 07–693. TRUCK-RAIL HANDLING, INC., ET AL. *v.* BURLINGTON NORTHERN & SANTA FE RAILWAY CO. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 130.

No. 07–695. HARTSTEIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 500 F. 3d 790.

No. 07–709. LOPEZ *v.* JACKSON, SECRETARY OF HOUSING AND URBAN DEVELOPMENT. C. A. 5th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 648.

No. 07–718. BORCHERT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 601.

No. 07–731. CORINES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–732. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 83.

No. 07–761. HOLLAND *v.* WASHINGTON HOMES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 3d 208.

No. 07–5061. RAGLAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 507.

No. 07–5493. MEDINA *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 955 So. 2d 581.

No. 07–5502. SHELLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–5552. SOLANO RODRIGUEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 211 Fed. Appx. 467.

No. 07–5611. BARAHONA-CASTRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 959.

No. 07–5673. SRENEVASAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 398.

No. 07–5686. TURNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 474 F. 3d 1265.

No. 07–5709. MENDOZA-RIVERA, AKA CONCHIANO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 111.

No. 07–5710. TURNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 232 Fed. Appx. 96.

No. 07–5785. MILLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 479 F. 3d 984.

No. 07–5829. GROSVENOR *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 627.

No. 07–5839. MITCHELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 3d 762.

No. 07–5877. LADD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 215 Fed. Appx. 526.

No. 07–5915. COLLINS *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–5971. CHAVEZ SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 487.

No. 07–5989. ARNOLD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 3d 177.

No. 07–6133. TAYLOR *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 07–6202. PINEDA-ARRELLANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 492 F. 3d 624.

No. 07–6231. RAMOS-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 347.

No. 07–6377. PEPION *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 316.

No. 07–6401. JOHNSON *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 284 Kan. 18, 159 P. 3d 161.

No. 07–6407. SUMMAGE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 481 F. 3d 1075.

No. 07–6446. HECTOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 3d 1150.

No. 07–6461. MANNS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 908.

No. 07–6506. WATTS, AKA VANN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 572.

No. 07–6538. ASHRAF *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–6544. KELLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 3d 1047.

No. 07–6588. GARDUNO-GONZALEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 414.

No. 07–6591. PAYNE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 354.

No. 07–6604. SIBLEY *v.* SUPREME COURT OF FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 945 So. 2d 510.

No. 07–6691. MURILLO-MONZON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 43.

No. 07–6710. TELLO-ORDONEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 237 Fed. Appx. 711.

No. 07–6712. ZIEGLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 3d 1184.

No. 07–6726. HURTADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 504.

No. 07–6741. ELIZALDE-ALTAMIRANO, AKA ISLAS-PEREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 846.

No. 07–6742. CROWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 493 F. 3d 744.

No. 07–6763. SANCHEZ-JUAREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 259.

No. 07–6774. NORRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 486 F. 3d 1045.

No. 07–6776. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 475 F. 3d 468.

No. 07–6786. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 88.

No. 07–6796. GARCIA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 327.

No. 07–6815. WILKINSON *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 210.

No. 07–6829. ALVAREZ-GRANADOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 350.

No. 07–6905. DUNLAP *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 173 P. 3d 1054.

No. 07–6959. DIXON *v.* ILLINOIS DEPARTMENT OF NATURAL RESOURCES. C. A. 7th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 34.

No. 07–6960. EVANS *v.* KILLIAN, BANKRUPTCY JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–6974. JOHNSON *v.* PALAKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–6988. HENNELLY *v.* OLIVA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 318.

No. 07–6989. IVANOVA *v.* MICHIGAN DEPARTMENT OF HUMAN SERVICES. Ct. App. Mich. Certiorari denied.

No. 07–7002. DEVANE *v.* HART, WARDEN. Super. Ct. Lowndes County, Ga. Certiorari denied.

No. 07–7007. BLACK *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7010. BROWN *v.* DISTRICT ATTORNEY OFFICE. C. A. 3d Cir. Certiorari denied.

No. 07–7012. BOONE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–7015. BAIL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7022. HAIL *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7028. CLAPPER *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 273 Neb. 750, 732 N. W. 2d 657.

No. 07–7032. DOWNEY *v.* FAHEY, CHAIRPERSON, VIRGINIA PAROLE BOARD, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 276.

No. 07–7043. STOLLER *v.* GOOGLE, INC. C. A. 7th Cir. Certiorari denied.

No. 07–7052. PRINCE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 4th 1179, 156 P. 3d 1015.

No. 07–7053. MORRIS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 215 Ariz. 324, 160 P. 3d 203.

No. 07–7054. LANCASTER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 50, 158 P. 3d 157.

No. 07–7055. LAVIGNE *v.* WARD, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–7059. WAPPLER *v.* VASBINDER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7060. WALTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1222, 931 N. E. 2d 368.

No. 07–7063. VANOVER *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–7064. WHITLEY *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–7065. WEAVER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–7067. BROWN *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 360.

No. 07–7073. LAWSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7074. LOUKAS *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7075. JOHNSON *v.* CONSTANTELLIS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 221 Fed. Appx. 48.

No. 07–7076. JACKSON *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7079. GILLAM *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 479 Mich. 253, 734 N. W. 2d 585.

No. 07–7080. GARZA *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 216 Ariz. 56, 163 P. 3d 1006.

No. 07–7083. DZULA ET UX. *v.* DZULA. Ct. App. N. M. Certiorari denied.

No. 07–7084. SIERRA *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7088. WOODS *v.* CHAPMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 35.

No. 07–7090. ALBRECHT *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS. C. A. 3d Cir. Certiorari denied. Reported below: 485 F. 3d 103.

No. 07–7093. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 959 So. 2d 740.

No. 07–7094. BIROTTE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 577.

No. 07–7095. BROWN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7097. GRAY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7098. GIBSON *v.* EVANS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7099. GOSSETT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 07–7100. FITTS *v.* SICKLER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 436.

No. 07–7103. SIMMONS *v.* SHASTA COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7104. ROONEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 07–7106. PINSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7107. SEEBOTH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7116. JACKSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–7122. GENEVIER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–7126. MCDERMOTT *v.* SAN FRANCISCO WOMEN'S MOTORCYCLE CONTINGENT. C. A. Fed. Cir. Certiorari denied. Reported below: 240 Fed. Appx. 865.

No. 07–7137. DANIELS *v.* ORTIZ, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7141. HAWKINS *v.* TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–7142. FOSTER *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7145. MATTOX *v.* EARLY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7147. HOLMES *v.* GENERAL ELECTRIC CO. C. A. 6th Cir. Certiorari denied.

No. 07–7149. HILL *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–7150. HIGH *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7151. FORWARD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–7152. GUILLMENO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–7154. HUNTER *v.* BECK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 848.

No. 07–7156. DALEY *v.* MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied.

No. 07–7165. HARRIS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 07–7166. RAMIREZ *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 101 Conn. App. 283, 921 A. 2d 202.

No. 07–7171. TOMPKINS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 980 So. 2d 451.

No. 07–7174. HILL *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7176. FOLSOM *v.* FRANKLIN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 856.

No. 07–7177. FERQUERON *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7178. FRANCIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7179. GARDNER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–7180. CASTILLO *v.* LOUISIANA ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 971 So. 2d 1081.

No. 07–7186. VIG *v.* CHUBB INSURANCE CO. ET AL. Dist. Ct. Nev., Clark County. Certiorari denied.

No. 07–7187. SURYADI *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 07–7190. SAUNDERS *v.* SPARKMAN, DEPUTY COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 103.

No. 07–7198. RIVERA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 369 Ill. App. 3d 1049, 932 N. E. 2d 1221.

No. 07–7200. SINGLETON *v.* HEDGEPETH, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 749.

No. 07–7201. RICKS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–7204. DUQUESNE *v.* HALL, CORRECTIONAL ADMINISTRATOR I, HARNETT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 970.

No. 07–7206. CICCONE *v.* SAPP ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 487.

No. 07–7210. CORBIN *v.* SUPREME COURT OF FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 917.

No. 07–7211. CORNELLIER *v.* EDWARDS ET AL. Ct. App. Ariz. Certiorari denied.

No. 07–7213. LANGSTER *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 274.

No. 07–7218. BRADFORD *v.* TERRELL, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–7220. ADLINGTON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 948 So. 2d 839.

No. 07–7221. BELL *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7223. JOSEPH *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 327.

No. 07–7225. JONES *v.* BURKE. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 175.

No. 07–7233. CLARK *v.* ST. JOSEPH/CANDLER HEALTH SYSTEMS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 799.

No. 07–7234. CHAVEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–7237. WRIGHT *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7239. YANCOSKIE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 915 A. 2d 111.

No. 07–7243. SANTEMA *v.* SOUTH DAKOTA BOARD OF PARDONS AND PAROLES. Sup. Ct. S. D. Certiorari denied. Reported below: 735 N. W. 2d 904.

No. 07–7244. MAHINDRU *v.* BHATIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 710.

No. 07–7245. JACOBS *v.* KERMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7246. MOOREFIELD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7248. JESTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7252. ERWIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7253. WILLIAMS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–7255. WILLIAMS *v.* POWELL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 319.

No. 07–7258. BURKHOLDER *v.* WOLFE ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7260. BAROCIO *v.* WARD, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 398.

No. 07–7261. ARRINGTON *v.* WHEELER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 185.

No. 07–7263. BUGARA *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7270. AMIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7271. BACKUS *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 561.

No. 07–7272. LLOYD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7273. WILLIAMS *v.* MAYBERG, DIRECTOR, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7277. WARD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 371 Ill. App. 3d 382, 862 N. E. 2d 1102.

No. 07–7278. WOODS *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 640.

No. 07–7279. LEINWEBER *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–7280. LOWERY *v.* UTAH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 374.

No. 07–7281. SHEARING *v.* GONZALEZ. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–7284. ELLIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–7285. HILL *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 192 N. J. 70, 926 A. 2d 854.

No. 07–7288. JOHNSON *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 342 Ore. 596, 157 P. 3d 198.

No. 07–7290. MADDIX *v.* CRAWFORD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 216 Fed. Appx. 605.

No. 07–7296. USHERY *v.* SHEETS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7298. STEPHENS *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 07–7299. SMITH *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 07–7301. SPUCK *v.* STOWITZKY, SUPERINTENDENT, STATE REGIONAL CORRECTIONAL FACILITY AT MERCER. C. A. 3d Cir. Certiorari denied.

No. 07–7303. ALFARO RAMIREZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7304. REYNOSA *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7316. HASSINGER *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 286.

No. 07–7323. MCDONALD *v.* OHIO. Ct. App. Ohio, Lake County. Certiorari denied.

No. 07–7324. NASH *v.* HEPP, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–7329. KRAUSE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–7330. MANNIX *v.* MACHNIK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 37.

No. 07–7332. HALL *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 965 So. 2d 823.

No. 07–7336. CAMPBELL *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1238, 931 N. E. 2d 375.

No. 07–7339. FOURNIER *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 07–7340. GRIGGS *v.* UPTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–7345. GANTT-EL *v.* BENNETT ET AL. C. A. 4th Cir. Certiorari denied.

No. 07–7347. FREEMAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7349. CARVER *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7350. CHAIRS *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied.

No. 07–7351. EARLE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–7353. COLE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–7354. WILLIAMS *v.* PRINCE GEORGE'S COUNTY, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 297.

No. 07–7355. ADAMS *v.* GEORGE, JUDGE, SUPERIOR COURT OF GEORGIA, COBB COUNTY. Sup. Ct. Ga. Certiorari denied.

No. 07–7357. BRIGHT *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 148.

No. 07–7359. SCHULTZE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 07–7360. SALINAS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–7363. ROZIER *v.* TIFFT, WARDEN. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 959 So. 2d 271.

No. 07–7364. SULLIVAN *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7365. ALLEN *v.* OHIO. Ct. App. Ohio, Lake County. Certiorari denied.

No. 07–7366. TOOLEY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied.

No. 07–7367. WHEELER *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7368. CRYER, AKA BRYANT *v.* HEDGEPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7369. NICHOLAS *v.* PATRICK ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7370. SAUNDERS-EL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–7373. WILLIAMS *v.* ST. VINCENT HOSPITAL ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–7386. RODRIGUEZ AVILA *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 156.

No. 07–7387. BAER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–7389. ATKINS *v.* DOVEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 808.

No. 07–7391. MARLIN *v.* FONTENOT. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 332.

No. 07–7398. MILBOURN *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7404. CASTON *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–7407. GILBERT *v.* BAY AREA RAPID TRANSIT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 847.

No. 07–7408. MCCLURE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 63.

No. 07–7409. HURD *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–7417. SCHEIBLER *v.* HIGHMARK BLUE SHIELD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 243 Fed. Appx. 691.

No. 07–7418. SAPORITO *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 3d Cir. Certiorari denied. Reported below: 248 Fed. Appx. 311.

No. 07–7420. WILLIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7421. TAYLOR *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–7422. WARE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7426. TAYLOR *v.* VAZQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7427. MCKINNEY *v.* BACA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 781.

No. 07–7429. RANGEL *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–7430. REGER *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 222 S. W. 3d 510.

No. 07–7431. SIMMONS *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7434. ASHBAUGH *v.* GUNDY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7435. BONILLA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 313, 160 P. 3d 84.

No. 07–7438. JACKMAN *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. D. C. Cir. Certiorari denied.

No. 07–7441. BLACK *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–7442. BOHANON *v.* TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 07–7444. BLANCO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 963 So. 2d 173.

No. 07–7445. ACKLES *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7446. AYAZI *v.* NEW YORK CITY DEPARTMENT OF EDUCATION. C. A. 2d Cir. Certiorari denied.

No. 07–7451. NIELDS *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 482 F. 3d 442.

No. 07–7454. SKORYCHENKO *v.* WOMEN'S COMMUNITY, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 628.

No. 07–7460. SANTOS *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 523.

No. 07–7461. JENKINS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 240.

No. 07–7472. ANTELOPE *v.* WILEY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–7483. KRUEGER *v.* HOWES. C. A. 6th Cir. Certiorari denied.

No. 07–7486. MCDOWELL *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 497 F. 3d 757.

No. 07–7487. PASS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–7489. WHITE *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 71.

No. 07–7492. TUCKER *v.* HARDY, SUPERINTENDENT, NASH CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 268.

No. 07–7495. MURRY *v.* MUKASEY, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 911.

No. 07–7499. STEVENS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 182, 158 P. 3d 763.

No. 07–7510. RODRIGUEZ *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 22.

No. 07–7511. SMITH *v.* KING ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7514. HEMSTREET *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 491 F. 3d 84.

No. 07–7520. GILLMORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 497 F. 3d 853.

No. 07–7525. AL GHASHIYAH *v.* WISCONSIN PAROLE COMMISSION ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–7528. ARMSTEAD *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 236.

No. 07–7530. BLOCKER *v.* OLLISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 761.

No. 07–7532. MERCADO *v.* WILEY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 761.

No. 07–7535. SHELTON *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 244 Fed. Appx. 328.

No. 07–7541. COOPER *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 07–7550. JACKSON *v.* GRAMS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–7557. DUTCHER *v.* LEHMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 631.

No. 07–7562. YATES *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 963 So. 2d 250.

No. 07–7564. VILLAR *v.* FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 962 So. 2d 905.

No. 07–7565. WADLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 969.

No. 07–7567. JENNINGS *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7576. TOBIAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7579. CREVELING *v.* TRESER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 575.

No. 07–7582. CHILDRESS *v.* POLK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–7584. DOLBIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 242 Fed. Appx. 814.

No. 07–7586. EWING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 494 F. 3d 607.

No. 07–7592. CARDENAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 892.

No. 07–7595. COPE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7598. CARBONARO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 3d 115.

No. 07–7602. EDGER *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 07–7614. LYNCH *v.* BRILL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 901.

No. 07–7615. COFFEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 948 So. 2d 758.

No. 07–7617. COMPTON *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied. Reported below: 366 S. C. 671, 623 S. E. 2d 661.

No. 07–7618. ELMARDOUDI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 501 F. 3d 935.

No. 07–7624. CRUZ BELTRAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 462.

No. 07–7628. McCORMICK *v.* FARWELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 754.

No. 07–7629. RATTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 794.

No. 07–7630. LUETH *v.* BEACH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 498 F. 3d 795.

No. 07–7632. WATSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 519.

No. 07–7633. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 575.

No. 07–7634. TORRES-LONA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 491 F. 3d 750.

No. 07–7635. MENDOZA-MENDOZA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 216.

No. 07–7636. MORENO *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 606.

No. 07–7638. WOMACK *v.* McDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 497 F. 3d 998.

No. 07–7643. MILLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 491 F. 3d 738.

No. 07–7645. MICHEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 165.

No. 07–7647. RADOSH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 490 F. 3d 682.

No. 07–7648. RINGLE *v.* LABOR AND INDUSTRY REVIEW COMMISSION. Ct. App. Wis. Certiorari denied.

No. 07–7649. RIVAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 493 F. 3d 131.

No. 07–7650. SCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 440.

No. 07–7654. SOUZA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7656. COONEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 198.

No. 07–7660. WARD *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 9th Cir. Certiorari denied.

No. 07–7662. BAILEY *v.* WAKEFIELD. Sup. Ct. Pa. Certiorari denied.

No. 07–7665. BYRD *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 245 Fed. Appx. 208.

No. 07–7666. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 687.

No. 07–7671. BAILEY *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 593 Pa. 521, 932 A. 2d 876.

No. 07–7672. BUSBY *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 07–7674. RODGERS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 93.

No. 07–7675. STOLLER *v.* FOGEL. C. A. 7th Cir. Certiorari denied.

No. 07–7680. CLARKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 239 Fed. Appx. 739.

No. 07–7682. CARANI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 492 F. 3d 867.

No. 07–7687. DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 156.

No. 07–7689. JIMENEZ-SILVESTRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 150.

No. 07–7690. HARRIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 490 F. 3d 589.

No. 07–7694. HARRIS *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7695. GREEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 604.

No. 07–7697. HURTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 871.

No. 07–7698. GARDNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–7699. GUERRERO-DAMIAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 171.

No. 07–7701. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 555.

No. 07–7702. ROBERTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 655.

No. 07–7706. BURTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–7708. BATTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 157.

No. 07–7709. BAILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 615.

No. 07–7711. CORTEZ-GALAVIZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 495 F. 3d 1203.

No. 07–7712. WESLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 329.

No. 07–7717. FRANKLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 856.

No. 07–7721. GAMBLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7727. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 654.

No. 07–7728. MCNEILL, AKA MCNEIL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 449.

No. 07–7729. MENDEZ-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 647.

No. 07–7730. LOTT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 240 Fed. Appx. 992.

No. 07–7737. RUDISILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 264.

No. 07–7742. SOLORZANO-CALDERON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 614.

No. 07–7743. SPIVEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 795.

No. 07–7754. MILLAN ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 565.

No. 07–7755. LUCERO-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 155.

No. 07–7759. BOONE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–7763. SHADE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 894.

No. 07–7766. ALLEN *v.* FOX, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 07–7771. HILL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 177.

No. 07–7772. HAYS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 773.

No. 07–7773. GALLEGOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 890.

No. 07–7774. HUDAIR, AKA GREEN *v.* SCHULTZ, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 07–7775. HUERTA-AVALOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 451.

No. 07–7777. MCCAULEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7781. SAMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 263.

No. 07–7782. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 123.

No. 07–7788. REED *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 112.

No. 07–7794. HOLLINGSWORTH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 495 F. 3d 795.

No. 07–7795. GASCON-GUERRERO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 492 F. 3d 930.

No. 07–7797. RICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 367.

No. 07–7803. MORRIS *v.* FULBRUGE, CLERK, UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 07–7804. BUCKLON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–7808. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–7812. SPENCER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 673.

No. 07–7814. URQUIDES-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 189.

No. 07–7818. CARTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 673.

No. 07–7819. CARREON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 221.

No. 07–7820. DRISTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 81.

No. 07–7823. O'NEIL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 497.

No. 07–7826. BRANDRETH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 354.

No. 07–7827. BLACK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 689.

No. 07–7828. BORGES *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 183 N. C. App. 240, 644 S. E. 2d 250.

No. 07–7831. LACEFIELD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 670.

No. 07–7832. FRYE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 3d 201.

No. 07–7833. VANBUREN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 529.

No. 07–7838. MORRISON *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 07–7840. MCCRAE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 150.

No. 07–7842. CABBAGESTALK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 109.

No. 07–7843. ESPARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 133.

No. 07–7844. DURAN AVILA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 980.

No. 07–7845. LECOUNT *v.* PATRICK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7847. MILLIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 369.

No. 07–7848. RICKETTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 984.

No. 07–7849. WILLIAMS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–7851. ANDERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 Fed. Appx. 479.

No. 07–7854. BAK *v.* POTTER, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 688.

No. 07–7855. BURNS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 495 F. 3d 873.

No. 07–7858. RUTHERFORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 236 Fed. Appx. 835.

No. 07–7859. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 324.

No. 07–7861. VANDAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 493 F. 3d 1194.

No. 07–7864. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 240 Fed. Appx. 995.

No. 07–7865. VASQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 223 Fed. Appx. 50.

No. 07–7867. AMISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7870. VANDIVERE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–7877. MCKENZIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 544.

No. 07–7880. AWALA *v.* BARKSDALE, JUDGE, UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–7881. SIMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 214 Fed. Appx. 311.

No. 07–7887. POINDEXTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7889. KOENEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 631.

No. 07–7890. BENNETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–7893. PEREZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–7896. TORRENCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 106.

No. 07–7897. WILKS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 242 Fed. Appx. 783.

No. 07–7899. ZAMORA-SUAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 Fed. Appx. 537.

No. 07–7901. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7902. MESA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–7907. OLAYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–7915. COLON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 153.

No. 07–7917. ZAMBRANA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–7918. TRUESDALE *v.* MENIFEE, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 827.

No. 07–7921. WHITE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–7922. VENZANT-DIAZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 107.

No. 07–7923. TYGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 229.

No. 07–7924. TABER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 497 F. 3d 1177.

No. 07–7927. BELTRAN-LUGO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 834.

No. 07–7929. MELVIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–7932. LUCAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 291.

No. 07–7933. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 500 F. 3d 840.

No. 07–7934. BLACK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 95.

No. 07–7935. BOUCHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7939. COLLINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 219.

No. 07–7940. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–7942. HAMILTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 499 F. 3d 734.

No. 07–7944. SALES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 730.

No. 07–7957. ROY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 506 F. 3d 28.

No. 07–7958. ROCHELLE *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 174.

No. 07–7960. STARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 208.

No. 07–7967. CEJA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 232.

No. 07–7968. DOUCETTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 496 F. 3d 64.

No. 07–7969. BOOKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7974. WEAVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 946.

No. 07–7975. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 945.

No. 07–7976. ZAVALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 207.

No. 07–7977. TORRES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–7979. OSTENKAMP *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 07–7980. NTI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 685.

No. 07–7982. ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 277.

No. 07–7989. PEREZ-CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 865.

No. 07–7994. BARRAZA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 206.

No. 07–7995. ADEFEYINTI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–7998. VALDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 47.

No. 07–7999. TIROUDA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 744.

No. 07–8000. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–8006. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 202.

No. 07–8030. MCCOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–8069. RICE *v.* BRADFORD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–218. UNITED STATES *v.* PICKETT. C. A. D. C. Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 475 F. 3d 1347.

No. 07–421. WKB ASSOCIATES, INC. *v.* FAIR HOUSING COUNCIL, INC., ET AL. C. A. 6th Cir. Motion of National Multi Hous-

ing Council et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 210 Fed. Appx. 469.

No. 07–533. MONGEAU *v.* CITY OF MARLBOROUGH, MASSACHUSETTS, ET AL. C. A. 1st Cir. Motion of New England Legal Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 492 F. 3d 14.

No. 07–538. CHRISTIE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS THE ADMINISTRATOR OF HOUSTON MEDICAL CENTER, ET AL. *v.* ADKINS. C. A. 11th Cir. Motions of American Hospital Association et al., Joint Commission, and Association of Black Physicians for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 488 F. 3d 1324.

No. 07–574. MOTIONLESS KEYBOARD CO. *v.* MICROSOFT CORP. ET AL. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 486 F. 3d 1376.

No. 07–585. PETRA PRESBYTERIAN CHURCH *v.* VILLAGE OF NORTHBROOK, ILLINOIS. C. A. 7th Cir. Motion of Pacific Justice Institute for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 489 F. 3d 846.

No. 07–7006. ALLEN *v.* SCHWARTZ, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 07–7159. CHRISTINA *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 229 Fed. Appx. 137.

No. 07–7328. SANDERS *v.* EXXON MOBIL CORP. ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 232 Fed. Appx. 378.

Rehearing Denied

No. 06–19. FISHER *v.* FISHER ET UX., *ante*, p. 809;
No. 06–1610. GEORGE *v.* ARORA ET AL., *ante*, p. 820;
No. 06–1615. WALKER *v.* SELDMAN ET AL., *ante*, p. 820;

No. 06–1649. MORRISSEY ET AL. *v.* LESNIAK ET AL., *ante*, p. 822;

No. 06–1680. ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS *v.* SIEBERT, *ante*, p. 3;

No. 06–1695. BANNISTER *v.* TEXAS, *ante*, p. 825;

No. 06–10868. MCGLOHON *v.* CITY OF DALLAS, TEXAS, *ante*, p. 831;

No. 06–11021. WILSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 834;

No. 06–11133. SIELCK *v.* SIELCK ET AL., *ante*, p. 836;

No. 06–11159. SEMLER *v.* MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS, *ante*, p. 837;

No. 06–11202. JOHNSTON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 839;

No. 06–11232. KINNALLY *v.* MARRIOTT INTERNATIONAL, INC., *ante*, p. 839;

No. 06–11323. WATERS *v.* HOREL, WARDEN, *ante*, p. 842;

No. 06–11451. MEADOR *v.* WADE, JUDGE, SUPERIOR COURT OF CALIFORNIA, SAN BERNARDINO COUNTY, *ante*, p. 847;

No. 06–11453. YOUNG *v.* MOORE, SUPERINTENDENT, NORTHEAST CORRECTIONAL CENTER, *ante*, p. 847;

No. 06–11582. SCHATZEL *v.* FLORIDA BOARD OF BAR EXAMINERS, *ante*, p. 852;

No. 06–11589. WILLIAMS *v.* CIRCUIT COURT OF ARKANSAS, MILLER COUNTY, ET AL., *ante*, p. 852;

No. 06–11654. ANDERSON *v.* AUGUSTA STATE MEDICAL PRISON ET AL., *ante*, p. 856;

No. 06–11689. MORENO SALAS *v.* CANO ET AL., *ante*, p. 858;

No. 06–11754. FORTUNE *v.* KEISLER, ACTING ATTORNEY GENERAL, *ante*, p. 863;

No. 06–11768. GREEN *v.* UNITED STATES, *ante*, p. 863;

No. 06–11775. REID *v.* TENNESSEE, *ante*, p. 974;

No. 06–11975. EDWARDS *v.* EVANS, WARDEN, *ante*, p. 1009;

No. 06–11981. LEETH ET UX. *v.* JIM WALTER HOMES, INC., ET AL., *ante*, p. 877;

No. 06–11993. WANZER *v.* PENA ET AL., *ante*, p. 878;

No. 06–11999. IVERSON *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, *ante*, p. 878;

No. 06–12021. RICHARDSON *v.* UNITED STATES POSTAL SERVICE, *ante*, p. 879;

No. 07–3. RWEYEMAMU *v.* CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES ET AL., *ante*, p. 886;

No. 07–169. NEIDERT ET UX. *v.* GLEN ONOKO ESTATES, *ante*, p. 891;

No. 07–181. TURNER *v.* UNITED STATES, *ante*, p. 891;

No. 07–190. CIEKLINSKI ET AL. *v.* NATIONAL LABOR RELATIONS BOARD, *ante*, p. 951;

No. 07–223. JONES ET AL. *v.* MONTANA UNIVERSITY SYSTEM, *ante*, p. 951;

No. 07–234. MAJORS *v.* SOUTH CAROLINA SECURITIES COMMISSION, *ante*, p. 975;

No. 07–292. WELIVER *v.* BOARD OF APPEALS, MARYLAND DEPARTMENT OF LABOR, LICENSING AND REGULATION, ET AL., *ante*, p. 976;

No. 07–314. PATTERSON *v.* PENNSYLVANIA OFFICE OF INSPECTOR GENERAL, *ante*, p. 976;

No. 07–426. HAMBLEN *v.* UNITED STATES, *ante*, p. 992;

No. 07–429. KEFALOS *v.* UNITED STATES, *ante*, p. 1010;

No. 07–5010. SANDLES *v.* UNITED STATES, *ante*, p. 893;

No. 07–5079. WANZER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 896;

No. 07–5207. IN RE GOLDEN, *ante*, p. 807;

No. 07–5232. WALL *v.* UNITED STATES, *ante*, p. 905;

No. 07–5309. MUECKE *v.* OLSON, *ante*, p. 910;

No. 07–5461. FELDER *v.* UNITED STATES, *ante*, p. 918;

No. 07–5569. ROBINSON *v.* UNITED STATES, *ante*, p. 923;

No. 07–5584. BROWN *v.* JACKSON ET AL., *ante*, p. 994;

No. 07–5624. SWENDELL *v.* CLC OF RICHMOND ET AL., *ante*, p. 954;

No. 07–5748. LANE *v.* BAKER ET AL., *ante*, p. 957;

No. 07–5768. TORRES *v.* MCCABE, CORRECTIONAL ADMINISTRATOR I, HARNETT CORRECTIONAL INSTITUTION, *ante*, p. 958;

No. 07–5823. GONZALES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 976;

No. 07–5851. ROBBINS *v.* ZOLLO ET AL., *ante*, p. 960;

No. 07–5870. OWENS *v.* GIURBINO, WARDEN, *ante*, p. 978;

No. 07–5875. IN RE BUTLER, *ante*, p. 946;

No. 07–5878. IN RE COLEMAN, *ante*, p. 808;
No. 07–5890. JUNG *v.* UNITED STATES, *ante*, p. 933;
No. 07–5924. JIMINEZ *v.* UNITED STATES, *ante*, p. 1011;
No. 07–5964. THOMPSON *v.* HICKS ET AL., *ante*, p. 994;
No. 07–6028. PARKER *v.* GEORGIA, *ante*, p. 995;
No. 07–6031. IN RE MILLER, *ante*, p. 989;
No. 07–6077. ROBISON *v.* KRAMER, WARDEN, *ante*, p. 996;
No. 07–6157. WOODSON *v.* UNITED STATES, *ante*, p. 939;
No. 07–6169. MCKENZIE *v.* SOUTH CAROLINA, *ante*, p. 998;
No. 07–6197. MINNFEE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 998;
No. 07–6218. ROWL *v.* CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY ET AL., *ante*, p. 999;
No. 07–6224. IN RE MORIN, *ante*, p. 988;
No. 07–6249. WILSON *v.* BORDELON ET AL., *ante*, p. 1011;
No. 07–6325. YONGPING ZHOU *v.* SCOTT D. POLLOCK ASSOCIATES, P. C., *ante*, p. 1012;
No. 07–6340. ANDERSON *v.* SILICKI, *ante*, p. 1000;
No. 07–6479. SMITH *v.* JACKSON, CORRECTIONAL ADMINISTRATOR, LANESBORO CORRECTIONAL INSTITUTION, *ante*, p. 1001;
No. 07–6494. BROWN *v.* UNITED STATES, *ante*, p. 982;
No. 07–6641. PADILLA *v.* UNITED STATES, *ante*, p. 985;
No. 07–6660. KINGSOLVER *v.* RAY, WARDEN, ET AL., *ante*, p. 1014;
No. 07–6704. MORALES *v.* MARQUES, *ante*, p. 1014;
No. 07–6709. YISRAEL, AKA JOLLY *v.* YISRAEL, AKA JOLLY, *ante*, p. 1029;
No. 07–6752. IN RE SACORA, *ante*, p. 988;
No. 07–6756. IN RE PARIS, *ante*, p. 988;
No. 07–6758. IN RE ALPINE, *ante*, p. 988;
No. 07–6800. COX *v.* GEORGIA, *ante*, p. 1015;
No. 07–6834. IN RE BERRY, *ante*, p. 988;
No. 07–6879. PRITCHETT *v.* UNITED STATES, *ante*, p. 1006;
No. 07–6899. YANG *v.* CITY OF SAN JOSE, CALIFORNIA, *ante*, p. 1048; and
No. 07–7026. IN RE UNDERWOOD, *ante*, p. 1008. Petitions for rehearing denied.

No. 07–6463. BOYD *v.* UNITED STATES MARSHALS SERVICE ET AL., *ante*, p. 1007. Petition for rehearing denied. THE CHIEF

JUSTICE took no part in the consideration or decision of this petition.

No. 01–8029. EVANS *v.* UNITED STATES, 535 U. S. 909; and
No. 07–5753. BOYD *v.* UNITED STATES, *ante*, p. 930. Motions for leave to file petitions for rehearing denied.

JANUARY 9, 2008

Dismissal Under Rule 46

No. 07–5427. MIRONESCU *v.* COSTNER, UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 480 F. 3d 664.

JANUARY 10, 2008

Miscellaneous Order

No. 07–330. GREENLAW *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1087.] Jay T. Jorgensen, Esq., of Washington, D. C., is invited to brief and argue this case, as *amicus curiae*, in support of the judgment below.

JANUARY 11, 2008

Dismissal Under Rule 46

No. 07–37. NEW MEXICO *v.* ROMERO. Sup. Ct. N. M. Certiorari dismissed under this Court's Rule 46. Reported below: 141 N. M. 403, 156 P. 3d 694.

Miscellaneous Order

No. 06–7517. IRIZARRY *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1086.] Peter B. Rutledge, Esq., of Washington, D. C., is invited to brief and argue this case, as *amicus curiae*, in support of the judgment below.

Probable Jurisdiction Postponed

No. 07–320. DAVIS *v.* FEDERAL ELECTION COMMISSION. Appeal from D. C. D. C. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Appellant's brief is to be filed on or before Wednesday, February 20, 2008. Appellee's brief is to be filed on or before Wednesday, March 19,

2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 501 F. Supp. 2d 22.

Certiorari Granted

No. 07–371. TAYLOR *v.* STURGELL, ACTING ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ET AL. C. A. D. C. Cir. Certiorari granted. Petitioner's brief is to be filed on or before Wednesday, February 20, 2008. Respondents' brief is to be filed on or before Wednesday, March 19, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 490 F. 3d 965.

No. 07–474. ENGQUIST *v.* OREGON DEPARTMENT OF AGRICULTURE ET AL. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Petitioner's brief is to be filed on or before Wednesday, February 20, 2008. Respondents' brief is to be filed on or before Wednesday, March 19, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 478 F. 3d 985.

No. 07–6053. GILES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari granted. Petitioner's brief is to be filed on or before Wednesday, February 20, 2008. Respondent's brief is to be filed on or before Wednesday, March 19, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 40 Cal. 4th 833, 152 P. 3d 433.

JANUARY 14, 2008

Dismissal Under Rule 46

No. 07–480. HUBER *v.* WAL-MART STORES, INC. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1074.] Writ of certiorari dismissed under this Court's Rule 46.1.

Certiorari Granted—Vacated and Remanded

No. 05–11273. CAWTHORN *v.* UNITED STATES. C. A. 8th Cir. Reported below: 429 F. 3d 793;

No. 06–5244. TABOR *v.* UNITED STATES. C. A. 8th Cir. Reported below: 439 F. 3d 826;

No. 06–6853. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Reported below: 187 Fed. Appx. 268;

No. 06–7012. UNDERWOOD *v.* UNITED STATES. C. A. 6th Cir. Reported below: 188 Fed. Appx. 459;

No. 06–8941. BLACK *v.* UNITED STATES. C. A. 7th Cir. Reported below: 207 Fed. Appx. 642;

No. 06–9102. ROBERSON *v.* UNITED STATES. C. A. 7th Cir. Reported below: 207 Fed. Appx. 642;

No. 06–9650. CASTILLO *v.* UNITED STATES. C. A. 7th Cir. Reported below: 202 Fed. Appx. 132;

No. 06–10523. MCGEE *v.* UNITED STATES. C. A. 8th Cir. Reported below: 211 Fed. Appx. 538;

No. 06–10958. GARDNER *v.* UNITED STATES. C. A. 6th Cir. Reported below: 214 Fed. Appx. 587; and

No. 06–12126. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Reported below: 211 Fed. Appx. 513. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Kimbrough* v. *United States*, *ante*, p. 85.

No. 07–6245. WILKINSON *v.* UNITED STATES. C. A. 8th Cir. Reported below: 225 Fed. Appx. 413;

No. 07–6346. ARANA-ASCENCIO *v.* UNITED STATES. C. A. 5th Cir. Reported below: 230 Fed. Appx. 442;

No. 07–6350. ESCALANTE VALLE *v.* UNITED STATES. C. A. 5th Cir. Reported below: 230 Fed. Appx. 434;

No. 07–6900. JENSEN *v.* UNITED STATES. C. A. 8th Cir. Reported below: 493 F. 3d 997;

No. 07–6935. CODY *v.* UNITED STATES. C. A. 4th Cir. Reported below: 241 Fed. Appx. 111;

No. 07–6951. NEWKIRK *v.* UNITED STATES. C. A. 4th Cir. Reported below: 240 Fed. Appx. 591;

No. 07–6998. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Reported below: 239 Fed. Appx. 78;

No. 07–7037. MONTALVO-FRANCO *v.* UNITED STATES. C. A. 5th Cir. Reported below: 234 Fed. Appx. 321;

No. 07–7068. BYRD *v.* UNITED STATES. C. A. 4th Cir. Reported below: 238 Fed. Appx. 948; and

No. 07–7805. BURNS *v.* UNITED STATES. C. A. 8th Cir. Reported below: 500 F. 3d 756. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Gall* v. *United States*, *ante*, p. 38.

No. 07–7183. COLEMAN *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Rita* v. *United States*, 551 U. S. 338 (2007). Reported below: 231 Fed. Appx. 512.

Certiorari Dismissed

No. 07–7588. PICKERING-GEORGE, AKA DALEY *v.* MUKASEY, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 227 Fed. Appx. 1.

No. 07–7616. DALEY, AKA GEORGE *v.* MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 07A415 (07–601). WILLIAMS *v.* DISTRICT OF COLUMBIA COURT OF APPEALS ET AL. Ct. App. D. C. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 07M36. KIMM *v.* NEW JERSEY. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 06–1181. DADA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 5th Cir. [Certiorari granted *sub nom. Dada* v. *Keisler*, 551 U. S. 1188.] Parties are directed to file supplemental briefs addressing the following question: "Whether an alien who has been granted voluntary departure and has filed a timely motion to reopen should be permitted to withdraw the request for voluntary departure prior to the expiration of the departure period."

Briefs, not to exceed 3,000 words, are to filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, January 25, 2008. Reply briefs, not to exceed 2,000 words, may be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, February 1, 2008.

No. 06–11429. BURGESS *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1074.] Motion of petitioner for ap-

pointment of counsel granted. Jeffrey L. Fisher, Esq., of Stanford, Cal., is appointed to serve as counsel for petitioner in this case.

No. 07–539. PROGRESS ENERGY, INC. *v.* TAYLOR. C. A. 4th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 07–6915. BARRITT *v.* MCBRIDE, WARDEN. Cir. Ct. Ohio County, W. Va. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1036] denied.

No. 07–381. IN RE LEWIS;
No. 07–8182. IN RE BOYER;
No. 07–8263. IN RE TATE;
No. 07–8272. IN RE FERGUSON;
No. 07–8340. IN RE WAGENER; and
No. 07–8390. IN RE MARMOLEJOS. Petitions for writs of habeas corpus denied.

No. 07–7581. IN RE DAVIDSON; and
No. 07–8229. IN RE GLASS. Petitions for writs of mandamus denied.

No. 07–380. IN RE LEWIS. Petition for writ of mandamus and/or prohibition denied.

No. 07–758. IN RE MANNA. Petition for writ of mandamus denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 07–7644. IN RE MURPHY. Petition for writ of prohibition denied.

Certiorari Denied

No. 06–1250. FEDERAL NATIONAL MORTGAGE ASSN. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 469 F. 3d 968.

No. 06–1441. ROMERO ET AL. *v.* BOYER. C. A. 9th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 602.

No. 06–1634. US FAX LAW CENTER, INC. *v.* IHIRE, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 476 F. 3d 1112.

No. 06–10345. JOHNSON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 1344, 148 P. 3d 767.

No. 06–10347. THOMAS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 122 Nev. 1361, 148 P. 3d 727.

No. 07–38. MCKENNA ET AL. *v.* OLIVER ET AL. (Reported below: 159 P. 3d 697); US FAX LAW CENTER, INC. *v.* MYRON CORP. (159 P. 3d 745); and USA TAX LAW CENTER, INC., DBA US FAX LAW CENTER, INC. *v.* MBA FINANCIAL GROUP, INC. Ct. App. Colo. Certiorari denied.

No. 07–65. PARKDALE INTERNATIONAL *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 475 F. 3d 1375.

No. 07–131. CSX TRANSPORTATION, INC., ET AL. *v.* BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 3d 814.

No. 07–236. CLERICI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 481 F. 3d 1324.

No. 07–277. ARKANSAS DIAGNOSTIC CENTER, P. A. *v.* TAHIRI. Sup. Ct. Ark. Certiorari denied. Reported below: 370 Ark. 157, 257 S. W. 3d 884.

No. 07–311. NATIONAL PETROCHEMICAL & REFINERS ASSN. ET AL. *v.* SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT ET AL.; and

No. 07–333. CHAMBER OF GREATER BATON ROUGE ET AL. *v.* SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT ET AL. C. A. D. C. Cir. Certiorari denied.

No. 07–359. FOERSTER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 65 M. J. 120.

No. 07–367. JAMES *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY NASHVILLE PUBLIC LIBRARY. C. A. 6th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 74.

No. 07–372. WEEKS MARINE, INC. *v.* FISHERMAN'S HARVEST, INC.; and

No. 07–389. NICOLON CORP. ET AL. *v.* FISHERMAN'S HARVEST, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 490 F. 3d 1371.

No. 07–385. LEWIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 3d 793.

No. 07–386. WOOTEN *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 07–408. PARRA *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 481 F. 3d 742.

No. 07–446. DIAGONAL REALTY, LLC *v.* ROSARIO ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 8 N. Y. 3d 755, 872 N. E. 2d 860.

No. 07–464. BENNETT *v.* LUCIER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 239 Fed. Appx. 639.

No. 07–471. RATLIFF-WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 493 F. 3d 812.

No. 07–493. AFG INDUSTRIES, INC., ET AL. *v.* CARDINAL IG CO., INC. C. A. Fed. Cir. Certiorari denied. Reported below: 224 Fed. Appx. 956.

No. 07–572. JONES *v.* ARKANSAS GAME & FISH COMMISSION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 119.

No. 07–590. TORCH E&P CO. *v.* J. M. HUBER CORP. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 231.

No. 07–592. HANSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–601. WILLIAMS *v.* DISTRICT OF COLUMBIA COURT OF APPEALS ET AL. Ct. App. D. C. Certiorari denied.

No. 07–602. CHAUVIN ET AL. *v.* STATE FARM FIRE & CASUALTY CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 495 F. 3d 232.

No. 07–604. GARCIA ET AL. *v.* CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–611. CAPITAL BRIDGE CO., LTD. *v.* IVL TECHNOLOGIES LTD. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 232 Fed. Appx. 987.

No. 07–612. STACK ET UX. *v.* MASON & ASSOCIATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 920.

No. 07–613. D. P. ET AL. *v.* SCHOOL BOARD OF BROWARD COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 483 F. 3d 725.

No. 07–616. BENN ET AL. *v.* LOS ANGELES COUNTY, CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 150 Cal. App. 4th 478, 58 Cal. Rptr. 3d 563.

No. 07–620. HOLST *v.* OREGON. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 685.

No. 07–621. GREENLEE COUNTY, ARIZONA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 487 F. 3d 871.

No. 07–634. LOBO *v.* CELEBRITY CRUISES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 488 F. 3d 891.

No. 07–637. ZUNDEL *v.* MUKASEY, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 468.

No. 07–643. GILLEY *v.* MONSANTO CO., INC. C. A. 11th Cir. Certiorari denied. Reported below: 490 F. 3d 848.

No. 07–646. SUN LIFE ASSURANCE COMPANY OF CANADA *v.* WENNER. C. A. 6th Cir. Certiorari denied. Reported below: 482 F. 3d 878.

No. 07–648. COLE *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 497 F. 3d 770.

No. 07–650. CHANEY ET AL. *v.* CLARKE, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 708.

No. 07–664. KORANGY RADIOLOGY ASSOCIATES, P. A., ET AL. *v.* FOOD AND DRUG ADMINISTRATION. C. A. 4th Cir. Certiorari denied. Reported below: 498 F. 3d 272.

No. 07–667. VEREEN *v.* DEUTSCHE BANK NATIONAL TRUST CO. ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 282 Ga. 284, 646 S. E. 2d 667.

No. 07–670. FLETCHER ET AL. *v.* MOORE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 493 F. 3d 941.

No. 07–677. KELLY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 964 So. 2d 135.

No. 07–694. GUTHRIE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 670.

No. 07–698. CLASSE *v.* FITZGERALD, SCHORR, BARMETTLER & BRENNAN, P. C., L. L. O., ET AL. Ct. App. Neb. Certiorari denied.

No. 07–724. STS MANAGEMENT DEVELOPMENT, INC., ET AL. *v.* NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 40 App. Div. 3d 620, 835 N. Y. S. 2d 648.

No. 07–725. SICILIANO *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 660.

No. 07–737. SPRINGER *v.* INTERNAL REVENUE SERVICE EX REL. UNITED STATES;

No. 07–738. SPRINGER *v.* INTERNAL REVENUE SERVICE EX REL. UNITED STATES; and

No. 07–739. SPRINGER *v.* INTERNAL REVENUE SERVICE EX REL. UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 793.

No. 07–743. BAXLEY *v.* UNITED STATES (two judgments). C. A. 11th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 901 (first judgment); 244 Fed. Appx. 270 (second judgment).

No. 07–746. LEHNER ET AL. *v.* BARTLETT ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 962 So. 2d 337.

No. 07–754. LOWE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–755. THINNES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 124.

No. 07–781. AURORA LOAN SERVICES, LLC *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 501 F. 3d 846.

No. 07–782. SWINT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–804. LANDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 604.

No. 07–808. MUHAMMAD, AKA BRIGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 502 F. 3d 646.

No. 07–5914. CATE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–5996. PRESTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 730.

No. 07–6140. BLACK *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 799, 161 P. 3d 1130.

No. 07–6154. QUOC VIET HOANG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 486 F. 3d 1156.

No. 07–6247. OWENS *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 399 Md. 388, 924 A. 2d 1072.

No. 07–6305. SANTOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 220.

No. 07–6380. NAVARRO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 476 F. 3d 188.

No. 07–6395. FIELDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 3d 313.

No. 07–6441. BEARAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 3d 528.

No. 07–6491. BECKFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 905.

No. 07–6541. MOREHOUSE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–6575. LUCATERO-CAMPOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 607.

No. 07–6607. ARON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 07–6671. JACOB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–6703. RONDON-URENA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 236 Fed. Appx. 830.

No. 07–6707. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 984.

No. 07–6714. DOBYNE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 4 So. 3d 585.

No. 07–6764. LOPEZ-TORRES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 237 Fed. Appx. 657.

No. 07–6794. FRANCISCO FLORES, AKA ALMASAN-TIRADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 931.

No. 07–6901. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 748.

No. 07–6920. GRANDOIT *v.* COOPERATIVE FOR HUMAN SERVICES. App. Ct. Mass. Certiorari denied. Reported below: 68 Mass. App. 1113, 863 N. E. 2d 95.

No. 07–6932. FROST *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 160 Wash. 2d 765, 161 P. 3d 361.

No. 07–6942. LEVESQUE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 364.

No. 07–6946. ADAMS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–6958. COMBS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 3d 1294.

No. 07–6963. MORENO-PARADA, AKA CAMAS-PINEDA, AKA MELANDES-PENA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 930.

No. 07–6967. AFRIDI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 81.

No. 07–6986. MARTINEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 3d 249.

No. 07–6997. RICKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 946.

No. 07–7020. PADILLA-ALVARADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 227 Fed. Appx. 103.

No. 07–7128. HAILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 300.

No. 07–7189. RAMIREZ, AKA CASTILLO RAMIREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 479 F. 3d 1229.

No. 07–7191. RICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–7250. WAKEFIELD *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 190 N. J. 397, 921 A. 2d 954.

No. 07–7439. SHEKHEM'EL-BEY *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–7456. RODGERS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7457. ANDERSON *v.* MARCH ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–7458. MALDONADO *v.* ROSENKRANZ ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 207 Fed. Appx. 733.

No. 07–7462. SORLIEN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–7465. CARTER *v.* SHEETS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7468. RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–7470. BALDWIN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 229 Fed. Appx. 243.

No. 07–7471. ALLEN *v.* CULLIVER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–7473. BACA *v.* ROBERT N. EWING CONSTRUCTION ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7475. AKINRO *v.* BLAKE. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 75.

No. 07–7479. WATKINS *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7480. CURTIS *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 781.

No. 07–7482. J. M., MOTHER OF MINOR CHILD E. S. *v.* BURATTI ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 956 So. 2d 1200.

No. 07–7491. WARREN *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 831.

No. 07–7497. OWUSU, AKA PORTER *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 07–7502. SPAIN *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 389.

No. 07–7504. JUVENAL OCHOA, AKA RUBALCABA OCHOA, AKA JUAREZ GOMEZ *v.* CLAY, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7505. THOMPSON *v.* SHILLING ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 682.

No. 07–7507. LEWIS *v.* MISSKELLY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–7513. SHAHEED *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7517. HACHENEY *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 160 Wash. 2d 503, 158 P. 3d 1152.

No. 07–7523. HOFLAND *v.* HOFLAND. Sup. Ct. N. H. Certiorari denied.

No. 07–7524. ANDERSON *v.* KING ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 319.

No. 07–7526. BROWN *v.* OHIO. Ct. App. Ohio, Greene County. Certiorari denied.

No. 07–7527. BAEZ *v.* HENDERSON, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 07–7531. ARNWINE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7533. TREVINO *v.* HARDISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 605.

No. 07–7536. COOK *v.* KROLL LABORATORY SPECIALISTS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 1.

No. 07–7538. COLON *v.* CITY OF CLEVELAND, OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 07–7540. CASTALDO *v.* COLORADO INDUSTRIAL CLAIM APPEALS OFFICE ET AL. Ct. App. Colo. Certiorari denied.

No. 07–7543. ZIMMERMAN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 988 So. 2d 1078.

No. 07–7556. CADY *v.* NORTHEASTERN ILLINOIS UNIVERSITY ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 369 Ill. App. 3d 486, 860 N. E. 2d 526.

No. 07–7560. ELLIS *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 07–7561. WALKER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7573. ALLEN *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 502.

No. 07–7574. JONES *v.* CHANDRA ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–7575. WILLIAMS *v.* CORRECTIONAL MEDICAL SERVICES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 614.

No. 07–7583. CRAYTON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–7585. COOPER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–7589. DAVIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7590. PHAT PHOUNG DOAN *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7593. DUDLEY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7599. CHAMBERS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7601. CLAYTON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 959 So. 2d 270.

No. 07–7603. HOLTSINGER *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7611. WAKELAND *v.* COPPLER & MANNICK, P. C., ET AL. Ct. App. N. M. Certiorari denied.

No. 07–7621. McCollum *v.* McDaniel, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 609.

No. 07–7623. Murden *v.* Ercole, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 497 F. 3d 178.

No. 07–7625. Bowers *v.* Scouten. C. A. 11th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 954.

No. 07–7626. Bush *v.* Felker, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 599.

No. 07–7627. Burton *v.* Minnesota. Sup. Ct. Minn. Certiorari denied.

No. 07–7631. Jones *v.* Farzam. C. A. 9th Cir. Certiorari denied.

No. 07–7637. Branch *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 961 So. 2d 659.

No. 07–7639. Tackett *v.* Nelson, Warden. C. A. 11th Cir. Certiorari denied.

No. 07–7642. Marshall *v.* North Carolina. Sup. Ct. N. C. Certiorari denied.

No. 07–7651. Skipper *v.* Hill et al. C. A. 6th Cir. Certiorari denied.

No. 07–7652. Sons *v.* All Seasons Travel Agency et al. Sup. Ct. Ala. Certiorari denied.

No. 07–7653. Santoyo *v.* Jones, Director, Oklahoma Department of Corrections. C. A. 10th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 524.

No. 07–7655. Cruz *v.* Runnels, Warden. C. A. 9th Cir. Certiorari denied.

No. 07–7657. Echols *v.* Illinois. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1234, 931 N. E. 2d 373.

No. 07–7658. WILLIAMS *v.* SCOTT ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–7659. WOOD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 491 F. 3d 196.

No. 07–7661. BROWN *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7663. BALES *v.* DISTRICT COURT OF IOWA, POLK COUNTY. Sup. Ct. Iowa. Certiorari denied.

No. 07–7664. BIRDWELL *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7667. ARRIAGA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–7668. BROWN *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 212 S. W. 3d 851.

No. 07–7669. AGUILAR *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7673. BROWNLOW *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7676. DRAKE *v.* BABBS ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7677. COOK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7678. CRIM *v.* MONEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7681. PIERRE *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 959 So. 2d 738.

No. 07–7691. GRAY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 274 Va. 290, 645 S. E. 2d 448.

No. 07–7692. IZAGUIRRE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 42 Cal. 4th 126, 164 P. 3d 578.

No. 07–7696. HOSKINS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 965 So. 2d 1.

No. 07–7703. VICE *v.* KRAMER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7705. ADI *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7713. TANDY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–7714. TOLLIVER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7715. FOLAN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 881.

No. 07–7732. BOWLING *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 224 S. W. 3d 577.

No. 07–7736. SIMS *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7747. CLAY *v.* BINGHAM, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 07–7787. WATTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 172.

No. 07–7800. STROPE *v.* KANSAS. Ct. App. Kan. Certiorari denied.

No. 07–7817. W. L. C. *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 738 N. W. 2d 662.

No. 07–7850. TRAVERSO *v.* MARYLAND. Cir. Ct., Prince George's County, Md. Certiorari denied.

No. 07–7874. BUNN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 07–7876. BAILEY *v.* HANSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 889.

No. 07–7882. MCCLELLAN *v.* BURNS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–7886. PARRISH *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 962 So. 2d 916.

No. 07–7910. LEE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7911. LUNA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7916. FELDER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 2.

No. 07–7919. LESKE *v.* BRILL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 391.

No. 07–7943. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 492 F. 3d 1031.

No. 07–7947. TUCKER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 41 App. Div. 3d 210, 839 N. Y. S. 2d 15.

No. 07–7971. LAZAROVICH *v.* SHERRER, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8001. VILLOT *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8002. WISE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–8003. SZYMANSKI *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 166 P. 3d 879.

No. 07–8008. SERRANO-FUENTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 546.

No. 07–8009. GUADALUPE-RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 501 F. 3d 17.

No. 07–8011. NORTH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–8012. RODRIGUEZ-PEREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–8021. COUNTERMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8022. COSME COMPEAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 92.

No. 07–8027. MINNIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 489 F. 3d 325.

No. 07–8042. CORONA-ROBLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 912.

No. 07–8044. DEANGELIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 471.

No. 07–8045. CARVAJAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 502 F. 3d 54.

No. 07–8046. CLINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–8049. NELSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 164.

No. 07–8053. PIPPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–8055. VALENTIN *v.* UNITED STATES; and
No. 07–8096. GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 239 Fed. Appx. 674.

No. 07–8056. BORRERO *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 161 Wash. 2d 532, 167 P. 3d 1106.

No. 07–8072. CAMARENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 918.

No. 07–8073. EMERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 501 F. 3d 804.

No. 07–8077. BECERRA-CESARIO *v.* UNITED STATES (Reported below: 239 Fed. Appx. 927); and CONTRERAS-ALVARADO *v.* UNITED STATES (239 Fed. Appx. 909). C. A. 5th Cir. Certiorari denied.

No. 07–8078. JACOBS *v.* INTERNAL REVENUE SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 171.

No. 07–8080. BUSTAMANTE-RODRIGUEZ *v.* UNITED STATES (Reported below: 239 Fed. Appx. 930); DIAZ-VALENCIA *v.* UNITED STATES (239 Fed. Appx. 917); ENRIQUEZ-MALDONADO *v.* UNITED STATES (239 Fed. Appx. 919); HERRERA-MUNOZ *v.* UNITED STATES (239 Fed. Appx. 925); MARTINEZ *v.* UNITED STATES (239 Fed. Appx. 920); PANTOJA-VERDE *v.* UNITED STATES (239 Fed. Appx. 923); REYES-DELGADO, AKA DELGADO-REYES *v.* UNITED STATES (247 Fed. Appx. 498); RUIZ-ALVAREZ *v.* UNITED STATES (239 Fed. Appx. 924); VALLADOLID-LERMA *v.* UNITED STATES (239 Fed. Appx. 921); and VALVERDE-DELGADO *v.* UNITED STATES (239 Fed. Appx. 924). C. A. 5th Cir. Certiorari denied.

No. 07–8081. PALACIOS-SOTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 483.

No. 07–8082. ROMERO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 955.

No. 07–8087. HESSMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 493 F. 3d 977.

No. 07–8090. HIDALGO-ESPINOSA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 792.

No. 07–8091. HAMILTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 630.

No. 07–8092. HANKERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 496 F. 3d 303.

No. 07–8095. GALVEZ-MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–8097. HINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 119.

No. 07–8101. PHILLIPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 249.

No. 07–8103. AVILA-SIFUENTES, AKA AVILA, AKA SOLIS-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 971.

No. 07–8111. PARKER *v.* GOOGLE, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 242 Fed. Appx. 833.

No. 07–8113. OSORIO-NORENA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 508 F. 3d 34.

No. 07–8115. PUNSCHKE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 789.

No. 07–8116. MENDOZA-GUEVARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 181.

No. 07–8120. BEARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 368.

No. 07–8123. ALLEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–8125. ROBERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 373.

No. 07–8133. HIBBERD *v.* SIMS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–8134. GIMENEZ *v.* CITY OF NEWARK, NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 07–8139. MORALES-ESTRADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 138.

No. 07–8140. PHILLIPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 159.

No. 07–8144. GARNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 491 F. 3d 532.

No. 07–8147. WILLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 457.

No. 07–8153. POWELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 503 F. 3d 147.

No. 07–8161. LOPEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8162. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 785.

No. 07–8166. SAUNDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 501 F. 3d 384.

No. 07–8169. BURNS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 498 F. 3d 578.

No. 07–8175. BANKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 494 F. 3d 681.

No. 07–8180. BENENHALEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 581.

No. 07–8185. KELLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 978.

No. 07–8194. EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 928.

No. 07–8196. MADRID-BELTRAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 284.

No. 07–8197. MAYER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 503 F. 3d 740.

No. 07–8198. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 954.

No. 07–8207. ROLAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 476.

No. 07–8210. GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 311.

No. 07–8211. ASHE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 182.

No. 07–8219. HARRIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 491 F. 3d 440.

No. 07–8220. HERNANDEZ-HERNANDEZ, AKA HERNANDEZ *v.* UNITED STATES (Reported below: 249 Fed. Appx. 330); ARCHUNDIA, AKA ARCHUNDIA-MENDOZA, AKA ARCHUNDA-BUSTOS *v.* UNITED STATES (242 Fed. Appx. 278); GARCIA-FIGUEROA, AKA TORO-GARCIA *v.* UNITED STATES (249 Fed. Appx. 370); BRICENO-DZIB *v.* UNITED STATES (249 Fed. Appx. 373); REYES-GOMEZ *v.* UNITED STATES (250 Fed. Appx. 33); VENEGAS *v.* UNITED STATES (249 Fed. Appx. 386); FLORES-HERNANDEZ, AKA GAYTAN-ROMAN *v.* UNITED STATES (250 Fed. Appx. 85); NERI-HERNANDES *v.* UNITED STATES (504 F. 3d 587); CHICA-CHACON, AKA CHACON *v.* UNITED STATES (250 Fed. Appx. 632); HERNANDEZ-IGNACIO *v.* UNITED STATES (251 Fed. Appx. 298); CADENAS-SANCHEZ, AKA MARTINEZ-GUARDIOLA *v.* UNITED STATES (251 Fed. Appx. 925); MARTINEZ-GASPAR, AKA GONZALEZ *v.* UNITED STATES (251 Fed. Appx. 969); CASTILLO-MORALES *v.* UNITED STATES (507 F. 3d 873); ZAMORA-GARCIA, AKA GARCIA-ZAMORA *v.* UNITED STATES (253 Fed. Appx. 415); LOPEZ-ALVAREZ *v.* UNITED STATES (253 Fed. Appx. 404); CONTRERAS-MONTOYA *v.* UNITED STATES (253 Fed. Appx. 419); RECINOS-TOVAR *v.* UNITED STATES (253 Fed. Appx. 414); SILVA-SALDANA, AKA LOPEZ-MORALES *v.* UNITED STATES (253 Fed. Appx. 417); ESPINO-REYES *v.* UNITED STATES (253 Fed. Appx. 440); CALDERON-MORENO *v.* UNITED STATES (253 Fed. Appx. 439); DE LEON-JALOMO *v.* UNITED STATES (253 Fed. Appx. 437); RAMOS-GUERRERO *v.* UNITED STATES (254 Fed. Appx. 305); NUNEZ-VALENZUELA *v.* UNITED STATES (254 Fed. Appx. 337); and PERAZA-CHICAS *v.* UNITED STATES (254 Fed. Appx. 399). C. A. 5th Cir. Certiorari denied.

No. 07–8221. WATKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–8223. FLOYD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 161.

No. 07–8228. HALE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 205.

No. 07–8234. EQBAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–8242. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 334.

No. 07–8244. GREENWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 174.

No. 07–8258. TAFOYA-ARELLANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 322.

No. 07–444. ABIGAIL ALLIANCE FOR BETTER ACCESS TO DEVELOPMENTAL DRUGS ET AL. *v.* VON ESCHENBACH, COMMISSIONER, FOOD AND DRUG ADMINISTRATION, ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 495 F. 3d 695.

No. 07–609. THANEDAR *v.* TIME WARNER COMMUNICATIONS OF HOUSTON, LLP, ET AL. C. A. 5th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 227 Fed. Appx. 385.

No. 07–8007. SNEAD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 241 Fed. Appx. 62.

Rehearing Denied

No. 06–1425. SMITH *v.* LOS ANGELES METROPOLITAN TRANSIT AUTHORITY ET AL., *ante*, p. 812;

No. 06–9690. INGRAM *v.* GEORGIA, *ante*, p. 1009;

No. 06–10851. KNOX *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, *ante*, p. 830;

No. 06–11383. SNEED *v.* FLORIDA ET AL., *ante*, p. 845;

No. 06–11713. FREEMAN *v.* WATKINS ET AL., *ante*, p. 860;

No. 07–352. WILLIAMS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 992;

No. 07–414. IN RE VON KAHL ET AL., *ante*, p. 988;

No. 07–5063. JACKSON *v.* SINGH ET AL., *ante*, p. 895;

No. 07–5764. PFEIFLE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 958;

No. 07–5922. IN RE HAFED, *ante*, p. 808;

No. 07–5923. FRANCIS *v.* CHESAPEAKE APPALACHIA, LLC, *ante*, p. 979;

No. 07–6002. LANCASTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 994;

No. 07–6026. PALMER *v.* GRANHOLM, GOVERNOR OF MICHIGAN, ET AL., *ante*, p. 995;

No. 07–6116. MAHAR *v.* MICHIGAN ET AL., *ante*, p. 996;

No. 07–6132. IN RE WILLIS, *ante*, p. 989;

No. 07–6150. LOPEZ ORTIZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 997;

No. 07–6160. TEQUE *v.* EVANS, WARDEN, *ante*, p. 997;

No. 07–6183. JACKSON *v.* BROWN, *ante*, p. 998;

No. 07–6225. ORILLA-CUERVO *v.* CITY OF UNION CITY, NEW JERSEY, ET AL., *ante*, p. 999;

No. 07–6237. SMITH *v.* WASHINGTON SUBURBAN SANITARY COMMISSION, *ante*, p. 999;

No. 07–6273. KONSAVICH *v.* UNITED STATES, *ante*, p. 966;

No. 07–6330. DORSEY *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, *ante*, p. 1024;

No. 07–6453. COLEMAN *v.* SOUTH CAROLINA, *ante*, p. 1026;

No. 07–6493. BREWSTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1027;

No. 07–6521. RHONE *v.* MISSISSIPPI, *ante*, p. 1013;

No. 07–6537. JONES ET AL. *v.* LOS ANGELES COUNTY EMPLOYEE RETIREMENT ASSN. ET AL., *ante*, p. 1028;

No. 07–6621. WILLIAMS *v.* UNITED STATES, *ante*, p. 984;

No. 07–6873. COVERSON *v.* UNITED STATES, *ante*, p. 1048;

No. 07–6882. IN RE MEINHARD, *ante*, p. 988;

No. 07–7016. IN RE TOWNZEN, *ante*, p. 1008; and

No. 07–7228. BELL *v.* HUGHES, *ante*, p. 1069. Petitions for rehearing denied.

JANUARY 15, 2008

Miscellaneous Order

No. 138, Orig. SOUTH CAROLINA *v.* NORTH CAROLINA. Kristin Linsley Myles, Esq., of San Francisco, Cal., is appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings, to direct subsequent proceedings, to summon witnesses, to issue subpoenas, and to take such evidence as may be introduced and such as she may deem it necessary to call for. The Special Master is directed to submit reports as she may deem appropriate.

The compensation of the Special Master, the allowances to her, the compensation paid to her legal, technical, stenographic, and clerical assistants, the cost of printing her reports, and all other proper expenses, including travel expenses, shall be charged

against and be borne by the parties in such proportion as the Court may hereafter direct.

Motions of Catawba River Water Supply Project and Duke Energy Carolinas, LLC, for leave to intervene are referred to the Special Master. [For earlier order herein, see, *e. g.*, *ante*, p. 804.]

JANUARY 17, 2008

Dismissal Under Rule 46

No. 07–647. O'MELVENY & MYERS *v.* DAVIS. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 485 F. 3d 1066.

JANUARY 18, 2008

Miscellaneous Order

No. 07A593. KUCINICH, UNITED STATES CONGRESSMAN, ET AL. *v.* TEXAS DEMOCRATIC PARTY ET AL. C. A. 5th Cir. Application for stay and/or injunction, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

Certiorari Granted

No. 06–923. METROPOLITAN LIFE INSURANCE CO. ET AL. *v.* GLENN. C. A. 6th Cir. Certiorari granted limited to Question 1 presented by the petition and the following question: "If an administrator that both determines and pays claims under an Employee Retirement Income Security Act plan is deemed to be operating under a conflict of interest, how should this conflict be taken into account on judicial review of a discretionary benefit determination?" Petitioners' brief is to be filed on or before Monday, February 25, 2008. Respondent's brief is to be filed on or before Monday, March 24, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 461 F. 3d 660.

No. 06–1249. WYETH *v.* LEVINE. Sup. Ct. Vt. Certiorari granted. Petitioner's brief is to be filed on or before Monday, February 25, 2008. Respondent's brief is to be filed on or before Monday, March 24, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 183 Vt. 76, 944 A. 2d 179.

No. 06–1595. CRAWFORD *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE. C. A. 6th Cir. Certiorari granted. Petitioner's brief is to be filed on or before Monday, February 25, 2008. Respondent's brief is to be filed on or before Monday, March 24, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 211 Fed. Appx. 373.

No. 07–463. SUMMERS ET AL. *v.* EARTH ISLAND INSTITUTE ET AL. C. A. 9th Cir. Certiorari granted. Petitioners' brief is to be filed on or before Monday, February 25, 2008. Respondents' brief is to be filed on or before Monday, March 24, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 490 F. 3d 687.

No. 07–562. ALTRIA GROUP, INC., ET AL. *v.* GOOD ET AL. C. A. 1st Cir. Certiorari granted. Petitioners' brief is to be filed on or before Monday, February 25, 2008. Respondents' brief is to be filed on or before Monday, March 24, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 501 F. 3d 29.

No. 06–1505. MEACHAM ET AL. *v.* KNOLLS ATOMIC POWER LABORATORY, AKA KAPL, INC., ET AL. C. A. 2d Cir. Motion of AARP et al. for leave to file a brief as *amici curiae* granted. Certiorari granted limited to Question 1 presented by the petition. Petitioners' brief is to be filed on or before Monday, February 25, 2008. Respondents' brief is to be filed on or before Monday, March 24, 2008. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. JUSTICE BREYER took no part in the consideration or decision of this motion and this petition. Reported below: 461 F. 3d 134.

JANUARY 22, 2008

Certiorari Granted—Vacated and Remanded

No. 06–560. AVIS BUDGET GROUP, INC., FKA CENDANT CORP., ET AL. *v.* CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Stoneridge Investment Partners, LLC* v. *Scientific-Atlanta, Inc.*, *ante*, p. 148. Reported below: 452 F. 3d 1040.

No. 07–678. TOM *v.* UNITED STATES. C. A. 1st Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gall* v. *United States*, *ante*, p. 38. Reported below: 504 F. 3d 89.

No. 07–6294. CONTRERAS-HURTADO *v.* UNITED STATES. C. A. 5th Cir. Reported below: 230 Fed. Appx. 432;

No. 07–7224. MALDONADO-MALAGON *v.* UNITED STATES. C. A. 5th Cir. Reported below: 242 Fed. Appx. 959;

No. 07–7309. GILLESPIE *v.* UNITED STATES. C. A. 6th Cir.;

No. 07–7317. OROZCO *v.* UNITED STATES. C. A. 5th Cir. Reported below: 243 Fed. Appx. 861; and

No. 07–8066. SRIRAM *v.* UNITED STATES. C. A. 7th Cir. Reported below: 482 F. 3d 956. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Gall* v. *United States*, *ante*, p. 38.

No. 07–7380. NELSON *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Rita* v. *United States*, 551 U. S. 338 (2007). Reported below: 237 Fed. Appx. 819.

No. 07–7811. RUHBAYAN *v.* UNITED STATES. C. A. 4th Cir. Reported below: 527 F. 3d 107;

No. 07–7941. FOOTE *v.* UNITED STATES. C. A. 4th Cir. Reported below: 249 Fed. Appx. 967;

No. 07–8024. COLE *v.* UNITED STATES. C. A. 1st Cir.; and

No. 07–8150. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Reported below: 229 Fed. Appx. 218. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Kimbrough* v. *United States*, *ante*, p. 85.

Certiorari Dismissed

No. 07–7733. BELL *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–7750. CENSKE *v.* SCHARTIER ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–7751. CENSKE *v.* LAVEY ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–7764. BELL *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 06–1431. CBOCS WEST, INC. *v.* HUMPHRIES. C. A. 7th Cir. [Certiorari granted, 551 U. S. 1189.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–1457. MORGAN STANLEY CAPITAL GROUP INC. *v.* PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON, ET AL.; and

No. 06–1462. CALPINE ENERGY SERVICES, L. P., ET AL. *v.* PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON, ET AL. C. A. 9th Cir. [Certiorari granted, 551 U. S. 1189.] Motion of respondent Federal Energy Regulatory Commission for divided argument granted. THE CHIEF JUSTICE and JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 06–1498. WARNER-LAMBERT CO., LLC, ET AL. *v.* KENT ET AL. C. A. 2d Cir. [Certiorari granted, 551 U. S. 1190.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Kansas et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied. THE CHIEF JUSTICE took no part in the consideration or decision of these motions.

No. 07–440. ROTHGERY *v.* GILLESPIE COUNTY, TEXAS. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1061.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 07–512. PACIFIC BELL TELEPHONE CO., DBA AT&T CALIFORNIA, ET AL. *v.* LINKLINE COMMUNICATIONS, INC., ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 07–543. AT&T CORP. *v.* HULTEEN ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 07–8446. IN RE ESPINOZA. Petition for writ of habeas corpus denied.

No. 07–7757. IN RE POYDRAS; and
No. 07–7758. IN RE BOAKYE-YIADOM. Petitions for writs of mandamus denied.

Certiorari Denied

No. 06–1184. SPRINT NEXTEL CORP. ET AL. *v.* NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 457 F. 3d 1238 and 486 F. 3d 1272.

No. 06–1269. UNITED STATES EX REL. BLY-MAGEE *v.* PREMO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 3d 914.

No. 07–183. GILMER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 955 So. 2d 829.

No. 07–260. DILLARD'S, INC. *v.* GREEN ET UX. C. A. 8th Cir. Certiorari denied. Reported below: 483 F. 3d 533.

No. 07–355. XIONG HUANG *v.* MUKASEY, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 554.

No. 07–418. ROSCA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 605.

No. 07–424. BOGLE-ASSEGAI *v.* CONNECTICUT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 3d 498.

No. 07–449. NTN CORP. ET AL. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 481 F. 3d 1355.

No. 07–516. KNOX *v.* MINK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 482 F. 3d 1244.

No. 07–521. WARD ET AL. *v.* WASHINGTON UNIVERSITY; and

No. 07–525. CATALONA ET AL. *v.* WASHINGTON UNIVERSITY. C. A. 8th Cir. Certiorari denied. Reported below: 490 F. 3d 667.

No. 07–551. MICHAELY *v.* MICHAELY. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 150 Cal. App. 4th 802, 59 Cal. Rptr. 3d 56.

No. 07–640. BERQUIST *v.* WASHINGTON MUTUAL BANK. C. A. 5th Cir. Certiorari denied. Reported below: 500 F. 3d 344.

No. 07–644. ILLINOIS *v.* WEST. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 355 Ill. App. 3d 28, 823 N. E. 2d 82.

No. 07–649. CHICAGO TITLE INSURANCE CO. *v.* MAGNUSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 3d 985.

No. 07–652. UNITED SENIORS ASSN., INC. *v.* PHILIP MORRIS USA INC. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 500 F. 3d 19.

No. 07–657. CAMPBELL *v.* TOWN OF WEYMOUTH, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied.

No. 07–666. WILLNER ET VIR *v.* FREY, CLERK, FAIRFAX COUNTY CIRCUIT COURT, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 744.

No. 07–672. MILLER-JENKINS *v.* MILLER-JENKINS. Sup. Ct. Va. Certiorari denied.

No. 07–704. MARTIN *v.* GODINEZ, EXECUTIVE DIRECTOR, COOK COUNTY DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Ill. Certiorari denied.

No. 07–6586. HOLLIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 490 F. 3d 1149.

No. 07–6822. DUKES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 37.

No. 07–6945. BATTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 499 Fed. Appx. 315.

No. 07–7115. LIBBY *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 926 A. 2d 724.

No. 07–7170. SILVA-VELIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 324.

No. 07–7209. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 290.

No. 07–7215. JENKINS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 972 So. 2d 165.

No. 07–7381. PARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–7448. GLOSSIP *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 157 P. 3d 143.

No. 07–7494. PORTER *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 551.

No. 07–7683. EASTERWOOD *v.* BECK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 145.

No. 07–7686. CATLETT *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7710. CHAMPION *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–7716. HINES *v.* CHRONES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7718. GANDARILLA *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7719. FURTADO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–7720. GRUFF *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 592 Pa. 792, 927 A. 2d 626.

No. 07–7724. HINTON *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7725. HEWLETT *v.* ABRAHAM ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 244 Fed. Appx. 414.

No. 07–7731. LEE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–7735. ADAMS *v.* LOCKHEED MARTIN ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 891 So. 2d 549.

No. 07–7744. SANTIVANES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–7748. DELAO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 235 S. W. 3d 235.

No. 07–7749. CLEVELAND *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7752. CENSKE *v.* LAURILLA ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–7753. CHAMBERS *v.* KENWORTHY, SUPERINTENDENT, LUMBERTON CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 962.

No. 07–7756. JOLLY *v.* JOLLY. Ct. App. Tenn. Certiorari denied.

No. 07–7760. BURROUGHS *v.* BELLSOUTH TELECOMMUNICATIONS, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 64.

No. 07–7765. ARIAS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–7767. MOSS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–7768. KOMOLAFE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 270.

No. 07–7776. PAUL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–7778. MCAFEE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–7779. LOUIS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 963 So. 2d 246.

No. 07–7780. PETERSON, AKA SATAAR *v.* REID ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 153.

No. 07–7783. ERBY *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–7784. BISNER *v.* CLARK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 217 Fed. Appx. 772.

No. 07–7785. BRUNO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7786. STOLLER *v.* ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Certiorari denied.

No. 07–7790. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 372 Ill. App. 3d 1096, 940 N. E. 2d 306.

No. 07–7791. JONES *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–7792. HOPE *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 961 So. 2d 994.

No. 07–7793. TEMONEY *v.* SAPP ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 974.

No. 07–7798. SANDERS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 315.

No. 07–7799. ROCHELLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 148.

No. 07–7802. RIVERA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 07–7816. CAMPBELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 955.

No. 07–7930. JIMENEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–7938. PORRELLO ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 501 F. 3d 931.

No. 07–7973. TADDIE *v.* OHIO. Ct. App. Ohio, Lake County. Certiorari denied.

No. 07–8265. HENRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 963.

No. 07–8305. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8330. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 544.

No. 07–8332. BELTZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–8351. ANGEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8353. DANOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 194.

No. 06–1341. REGENTS OF THE UNIVERSITY OF CALIFORNIA *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE KENNEDY took no part in the consideration or decision of this petition. Reported below: 482 F. 3d 372.

No. 07–541. ALEXANDRIA CITY SCHOOL BOARD *v.* A. K., A MINOR, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, J. K. ET AL. C. A. 4th Cir. Motion of National School Boards Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 484 F. 3d 672.

No. 07–654. JONES *v.* JENNINGS. C. A. 1st Cir. Motion of Rhode Island League of Cities and Towns for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 499 F. 3d 2.

Rehearing Denied

No. 07–202. M2 SOFTWARE, INC. *v.* VIACOM INC. ET AL., *ante*, p. 1038;

No. 07–399. BAZARGANI *v.* SNYDER ET AL., *ante*, p. 1040;

No. 07–5600. McNeill *v.* Polk, Warden, *ante*, p. 1043; and
No. 07–6608. Batshever *v.* Cuomo, Attorney General of New York, et al., *ante*, p. 1044. Petitions for rehearing denied.

January 24, 2008

Dismissal Under Rule 46

No. 07–899. International Brotherhood of Police Officers et al. *v.* Dixon. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 504 F. 3d 73.

January 28, 2008

Dismissal Under Rule 46

No. 06–1457. Morgan Stanley Capital Group Inc. *v.* Public Utility District No. 1 of Snohomish County, Washington, et al.; and
No. 06–1462. Calpine Energy Services, L. P., et al. *v.* Public Utility District No. 1 of Snohomish County, Washington, et al. C. A. 9th Cir. [Certiorari granted, 551 U. S. 1189.] Writ of certiorari dismissed as to Calpine Energy Services, L. P., under this Court's Rule 46.

January 31, 2008

Miscellaneous Order

No. 07A630. Callahan *v.* Allen, Commissioner, Alabama Department of Corrections, et al. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, granted pending the timely filing and disposition of a petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

February 6, 2008

Dismissal Under Rule 46

No. 07–909. American Federation of Government Employees, AFL–CIO *v.* Gates, Secretary of Defense, et al.

C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 486 F. 3d 1316.

FEBRUARY 7, 2008

Dismissal Under Rule 46

No. 07–7291. BURNS *v.* MICHIGAN. Sup. Ct. Mich. Certiorari dismissed under this Court's Rule 46. Reported below: 479 Mich. 599, 739 N. W. 2d 523.

FEBRUARY 15, 2008

Miscellaneous Orders

No. 06–1431. CBOCS WEST, INC. *v.* HUMPHRIES. C. A. 7th Cir. [Certiorari granted, 551 U. S. 1189.] Motion of Historians et al. for leave to file a brief as *amici curiae* granted.

No. 06–1463. PRESTON *v.* FERRER. Ct. App. Cal., 2d App. Dist. [Certiorari granted, 551 U. S. 1190.] Motion of respondent for leave to file a supplemental brief after argument granted.

No. 07–214. ALLISON ENGINE CO., INC., ET AL. *v.* UNITED STATES EX REL. SANDERS ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 989.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–219. EXXON SHIPPING CO. ET AL. *v.* BAKER ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 989.] Motion of respondents for additional time to argue granted. Motion of Alaska for leave to participate in oral argument as *amicus curiae* and for divided argument denied. JUSTICE ALITO took no part in the consideration or decision of these motions.

FEBRUARY 19, 2008

Certiorari Granted—Vacated and Remanded

No. 07–470. ROBINSON ET AL. *v.* LEHMAN. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Scott* v. *Harris*, 550 U. S. 372 (2007). JUSTICE STEVENS and JUSTICE GINSBURG would deny the petition for writ of certiorari. Reported below: 228 Fed. Appx. 697.

No. 07–7962. D'AMICO *v.* UNITED STATES. C. A. 1st Cir. Reported below: 496 F. 3d 95;

No. 07–8388. RIVERA *v.* UNITED STATES. C. A. 8th Cir.; and

No. 07–8399. SILVER *v.* UNITED STATES. C. A. 4th Cir. Reported below: 242 Fed. Appx. 23. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Gall* v. *United States*, *ante*, p. 38.

No. 07–8535. PARKS *v.* UNITED STATES. C. A. 8th Cir. Reported below: 238 Fed. Appx. 187;

No. 07–8702. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Reported below: 251 Fed. Appx. 955; and

No. 07–8732. GONZALEZ *v.* UNITED STATES. C. A. 2d Cir. Reported below: 251 Fed. Appx. 58. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Kimbrough* v. *United States*, *ante*, p. 85.

Certiorari Dismissed

No. 07–7813. LYNN *v.* HERRERA ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–7914. CASSELL *v.* THARP ET AL. Super. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 919 A. 2d 966.

No. 07–7931. LYNN *v.* HERRERA ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–7950. STEELE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–8017. THOMPSON *v.* DAVIS, WARDEN (two judgments). C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–8122. BROWN *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Motion of

petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–8132. HANSEN *v.* SCHMIDT ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 251 Fed. Appx. 376.

No. 07–8199. STOLLER *v.* PURE FISHING, INC. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–8302. MYRON *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–8471. BAYRAMOGLU *v.* KANE, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 07–8551. DOLENZ *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–8793. JARVIS *v.* STANSBERRY, WARDEN. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 235 Fed. Appx. 113.

Miscellaneous Orders

No. 07A430. RANGOLAN *v.* MUKASEY, ATTORNEY GENERAL. C. A. 4th Cir. Application for stay, addressed to JUSTICE KENNEDY and referred to the Court, denied.

No. 07A601. RODRIGUEZ *v.* EDITOR IN CHIEF, LEGAL TIMES, ET AL. Application for preliminary injunction, addressed to JUS-

TICE BREYER and referred to the Court, denied. THE CHIEF JUSTICE took no part in the consideration or decision of this application.

No. D–2449. IN RE DISCIPLINE OF HOENIGER. Berthold H. Hoeniger, of Bridgewater, Conn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2450. IN RE DISCIPLINE OF ABADY. Samuel Aaron Abady, of Bronxville, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2451. IN RE DISCIPLINE OF ZANDER. Ben J. Zander, of Loretto, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 07M37. NUCLEONICS, INC. *v.* BENITEC AUSTRALIA, LTD. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 07M38. BLYTHE *v.* HIGHLAND HOSPITAL;

No. 07M39. ALLEN *v.* MISSOURI DEPARTMENT OF PUBLIC SAFETY, DIVISION OF LIQUOR CONTROL, ET AL.; and

No. 07M40. MCKINNEDY *v.* SOUTH CAROLINA DEPARTMENT OF APPELLATE DEFENSE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 07M41. BURROUGHS *v.* DEPARTMENT OF THE ARMY. Motion for leave to proceed as a veteran granted.

No. 137, Orig. MONTANA *v.* WYOMING ET AL. Motion for leave to file bill of complaint granted. Wyoming is allowed 45 days within which to file a motion to dismiss, in the nature of a motion under Fed. Rule Civ. Proc. 12(b)(6). Plaintiff is allowed 30 days to file a response to the motion. A reply, if any, shall be filed within 10 days after the response is filed. [For earlier order herein, see, *e. g.*, 550 U. S. 932.]

No. 06–937. QUANTA COMPUTER, INC., ET AL. *v.* LG ELECTRONICS, INC. C. A. Fed. Cir. [Certiorari granted, 551 U. S. 1187.] Motion of petitioners to unseal the reply brief granted.

No. 06–11429. BURGESS *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1074.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 07–615. MINISTRY OF DEFENSE AND SUPPORT FOR THE ARMED FORCES OF THE ISLAMIC REPUBLIC OF IRAN *v.* ELAHI. C. A. 9th Cir.;

No. 07–618. GOSS INTERNATIONAL CORP. *v.* TOKYO KIKAI SEISAKUSHO ET AL. C. A. 8th Cir.; and

No. 07–619. PT PERTAMINA (PERSERO), FKA PERUSAHAAN PERTAMBANGAN MINYAK DAN GAS BUMI NEGARA *v.* KARAHA BODAS CO., L. L. C. C. A. 2d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 07–7405. MILES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1092] denied.

No. 07–8190. REASE *v.* AT&T CORP. C. A. 11th Cir.;

No. 07–8233. DALACK *v.* VILLAGE OF TEQUESTA, FLORIDA. C. A. 11th Cir.; and

No. 07–8763. EVANS *v.* SUTER, CLERK, SUPREME COURT OF THE UNITED STATES. C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 11, 2008, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 07–8486. IN RE TORREZ;

No. 07–8502. IN RE PICKLE;

No. 07–8524. IN RE OCADIO;

No. 07–8587. IN RE MITCHELL;

No. 07–8617. IN RE PALOMO;

No. 07–8652. IN RE SPENCER;

No. 07–8663. IN RE PORTER;

No. 07–8684. IN RE STAFFNEY ET AL.;

No. 07–8694. IN RE DORSEY;

No. 07–8718. IN RE GLASER;
No. 07–8739. IN RE DUFRENE;
No. 07–8758. IN RE CARTER;
No. 07–8770. IN RE LEWIS;
No. 07–8886. IN RE WILLIAMS;
No. 07–8994. IN RE CARTER;
No. 07–8995. IN RE CURTIS; and
No. 07–9046. IN RE BENITEZ. Petitions for writs of habeas corpus denied.

No. 07–8515. IN RE OSWALD. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 07–8029. IN RE CAMPBELL;
No. 07–8225. IN RE GIBSON;
No. 07–8693. IN RE DOWDY; and
No. 07–8712. IN RE STAFFORD. Petitions for writs of mandamus denied.

No. 07–796. IN RE BLACK. Petition for writ of mandamus denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 07–626. IN RE WESTBORO BAPTIST CHURCH, INC., ET AL. Petition for writ of mandamus and/or prohibition denied.

No. 07–954. IN RE ALMEJO; and
No. 07–7860. IN RE TIMMONS. Petitions for writs of mandamus and/or prohibition denied.

No. 07–8626. IN RE STOLLER; and
No. 07–8714. IN RE STOLLER. Motions of petitioner for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

No. 07–8004. IN RE MOORE. Petition for writ of prohibition denied.

No. 07–8176. IN RE BRAVO. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of prohibition dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 07–513. HERRING *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted. Reported below: 492 F. 3d 1212.

No. 07–581. 14 PENN PLAZA LLC ET AL. *v.* PYETT ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 498 F. 3d 88.

No. 07–610. LOCKE ET AL. *v.* KARASS, STATE CONTROLLER, ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 498 F. 3d 49.

No. 07–636. KENNEDY, EXECUTRIX OF THE ESTATE OF KENNEDY, DECEASED *v.* PLAN ADMINISTRATOR FOR DUPONT SAVINGS AND INVESTMENT PLAN ET AL. C. A. 5th Cir. Certiorari granted limited to Question 3 presented by the petition. Reported below: 497 F. 3d 426.

Certiorari Denied

No. 06–11597. ROBINSON-BEY *v.* FEKETEE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 738.

No. 06–11868. BALDWIN *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 06–12042. LOPEZ-RODRIGUEZ *v.* UNITED STATES (Reported below: 227 Fed. Appx. 423); PRADO-ORTIZ *v.* UNITED STATES (227 Fed. Appx. 421); PEREZ-MONTERO, AKA ALFREDO *v.* UNITED STATES (245 Fed. Appx. 335); ROCHA-GAYTAN *v.* UNITED STATES (227 Fed. Appx. 419); ZAGAL-MERAZ *v.* UNITED STATES (227 Fed. Appx. 422); RIVERA-ALVAREZ *v.* UNITED STATES (228 Fed. Appx. 483); SIERRA-HERNANDEZ *v.* UNITED STATES (229 Fed. Appx. 327); LOPEZ-VASQUEZ, AKA LOPEZ, AKA LOPEZ VASQUES, AKA CALDERON *v.* UNITED STATES (229 Fed. Appx. 343); COLATOS-RIVAS, AKA COLATOS-RIVERA, AKA RIVAS *v.* UNITED STATES (236 Fed. Appx. 101); VENCES *v.* UNITED STATES; LOREDO-PECINA *v.* UNITED STATES (243 Fed. Appx. 8); and

RAMIREZ-MALDONADO *v.* UNITED STATES (242 Fed. Appx. 135). C. A. 5th Cir. Certiorari denied.

No. 06–12082. ROSENBAUM-ALANIS *v.* UNITED STATES (Reported below: 483 F. 3d 381); GUARDADO-ORTEGA *v.* UNITED STATES (225 Fed. Appx. 227); GONZALEZ-SILVA *v.* UNITED STATES (228 Fed. Appx. 413); PECENO-MONTANEZ, AKA PICENO-MONTANEZ *v.* UNITED STATES (227 Fed. Appx. 345); LOZANO-MIRELES *v.* UNITED STATES (224 Fed. Appx. 431); LUMBRERAS-LINARES *v.* UNITED STATES (224 Fed. Appx. 433); RIASCOS-CUENU *v.* UNITED STATES (225 Fed. Appx. 287); AYALA-FLORES *v.* UNITED STATES (225 Fed. Appx. 333); ARGUETA-HERNANDEZ, AKA HERNANDEZ-ARGUETA *v.* UNITED STATES (225 Fed. Appx. 336); JIMENEZ-ESTEBAN *v.* UNITED STATES (227 Fed. Appx. 372); CONTRERAS-JIMENEZ *v.* UNITED STATES (227 Fed. Appx. 371); and TREJO-HERNANDEZ *v.* UNITED STATES (227 Fed. Appx. 425). C. A. 5th Cir. Certiorari denied.

No. 07–288. COTTRELL ET AL. *v.* NATIONAL COLLEGIATE ATHLETIC ASSN. ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 975 So. 2d 306.

No. 07–323. ARCHDIOCESE OF WASHINGTON ET AL. *v.* MOERSEN. Ct. App. Md. Certiorari denied. Reported below: 399 Md. 637, 925 A. 2d 659.

No. 07–337. PATEL *v.* RICE, SECRETARY OF STATE. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 414.

No. 07–350. BROWN, DISTRICT ATTORNEY, COUNTY OF QUEENS, NEW YORK *v.* MCKITHEN. C. A. 2d Cir. Certiorari denied. Reported below: 481 F. 3d 89.

No. 07–407. HARRIS ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 472.

No. 07–466. REEVES ET AL. *v.* CHURCHICH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 484 F. 3d 1244.

No. 07–468. AMERICAN CIVIL LIBERTIES UNION ET AL. *v.* NATIONAL SECURITY AGENCY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 493 F. 3d 644.

No. 07–481. WALTERS *v.* MUKASEY, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 198 Fed. Appx. 78.

No. 07–482. TEXAS *v.* SOILEAU. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 3d 302.

No. 07–492. ONESIMPLELOAN ET AL. *v.* SPELLINGS, SECRETARY OF EDUCATION, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 496 F. 3d 197.

No. 07–501. SHIRLEY ET VIR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 419.

No. 07–529. GEORGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 771.

No. 07–545. VAN ELK, LTD., ET AL. *v.* REYES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 148 Cal. App. 4th 604, 56 Cal. Rptr. 3d 68.

No. 07–575. PHELPS, WARDEN *v.* STEVENSON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 495 F. 3d 62.

No. 07–576. COOK CHILDREN'S MEDICAL CENTER *v.* NEW ENGLAND PPO PLAN OF GENERAL CONSOLIDATED MANAGEMENT, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 491 F. 3d 266.

No. 07–606. JOHN CARLO, INC. *v.* CHAO, SECRETARY OF LABOR. C. A. 11th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 902.

No. 07–614. MAXITILE, INC. *v.* JIMING SUNG. C. A. 9th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 274.

No. 07–623. FORD MOTOR CO. *v.* CITY OF SEATTLE, EXECUTIVE SERVICE DEPARTMENT, ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 160 Wash. 2d 32, 156 P. 3d 185.

No. 07–625. CITY OF HEALDSBURG, CALIFORNIA *v.* NORTHERN CALIFORNIA RIVER WATCH. C. A. 9th Cir. Certiorari denied. Reported below: 496 F. 3d 993.

No. 07–632. WAGNER-MEINERT, INC. *v.* EDA CONTROLS CORP. C. A. 6th Cir. Certiorari denied.

No. 07–675. MCGINEST *v.* GTE SERVICE CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 72.

No. 07–682. SOENARYO ET AL. *v.* MUKASEY, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 280.

No. 07–687. AKL *v.* SWERSKY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 231.

No. 07–696. HICKEY *v.* BIANCUR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 546.

No. 07–697. HARRIS COUNTY BAIL BOND BOARD ET AL. *v.* PRUETT ET AL.; and

No. 07–856. PRUETT ET AL. *v.* HARRIS COUNTY BAIL BOND BOARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 499 F. 3d 403.

No. 07–699. FIVE STAR PARKING *v.* UNION LOCAL 723, INTERNATIONAL BROTHERHOOD OF TEAMSTERS. C. A. 3d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 135.

No. 07–701. MACARTHUR ET AL. *v.* SAN JUAN COUNTY, UTAH, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 497 F. 3d 1057.

No. 07–702. WILDER *v.* TURNER. C. A. 10th Cir. Certiorari denied. Reported below: 490 F. 3d 810.

No. 07–703. PAVATT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 159 P. 3d 272.

No. 07–705. CHIMAL *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 378.

No. 07–706. MECCA ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 232 Fed. Appx. 66.

No. 07–707. WINTERROWD *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied.

No. 07–708. COLLIER ET VIR *v.* PARIZEK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 342.

No. 07–710. ROSARIO ROBLES *v.* BOSCH ET AL. C. A. 1st Cir. Certiorari denied.

No. 07–711. XAVIER UNIVERSITY OF LOUISIANA *v.* TRAVELERS CASUALTY PROPERTY COMPANY OF AMERICA. C. A. 5th Cir. Certiorari denied. Reported below: 495 F. 3d 191.

No. 07–712. TRAFIGURA BEHEER B. V. *v.* M/T PROBO ELK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 309.

No. 07–713. CHEHARDY ET AL. *v.* ALLSTATE INDEMNITY CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 495 F. 3d 191.

No. 07–714. DEICH-KEIBLER ET AL. *v.* BANK ONE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 164.

No. 07–717. MINIX ET AL. *v.* JELD-WEN, INC. C. A. 11th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 578.

No. 07–720. COOK *v.* TOLEDO BAR ASSN. Sup. Ct. Ohio. Certiorari denied. Reported below: 114 Ohio St. 3d 108, 868 N. E. 2d 973.

No. 07–723. SUPERVALU, INC. *v.* BOARD OF TRUSTEES OF THE SOUTHWESTERN PENNSYLVANIA AND WESTERN MARYLAND TEAMSTERS AND EMPLOYEES PENSION FUND. C. A. 3d Cir. Certiorari denied. Reported below: 500 F. 3d 334.

No. 07–726. SHAHANI *v.* NAVANI. C. A. 10th Cir. Certiorari denied. Reported below: 496 F. 3d 1121.

No. 07–727. SUGGS *v.* STANLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 343.

No. 07–729. LATIN AMERICAN MUSIC CO., INC., DBA ACEMLA, ET AL. *v.* SOUTHERN MUSIC PUBLISHING CO., INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 499 F. 3d 32.

No. 07–730. PARKS *v.* MISSISSIPPI DEPARTMENT OF TRANSPORTATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 282.

No. 07–736. SMITH *v.* UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT. C. A. 10th Cir. Certiorari denied. Reported below: 484 F. 3d 1281.

No. 07–744. GAST *v.* JENNER. Sup. Ct. Fla. Certiorari denied. Reported below: 959 So. 2d 1202.

No. 07–747. LUNA ET UX. *v.* SUPERIOR COURT OF CALIFORNIA, VENTURA COUNTY, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 07–752. NOVOLOG BUCKS COUNTY *v.* CSX TRANSPORTATION CO. C. A. 3d Cir. Certiorari denied. Reported below: 502 F. 3d 247.

No. 07–753. MITRANO *v.* SUPREME COURT OF NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 07–757. ERNEST *v.* SOUTH FLORIDA BAPTIST HOSPITAL. Sup. Ct. Fla. Certiorari denied. Reported below: 957 So. 2d 1175.

No. 07–759. LORIZ ET UX. *v.* CONNAUGHTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 469.

No. 07–760. TEMPLE BNAI SHALOM OF GREAT NECK *v.* VILLAGE OF GREAT NECK ESTATES ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 32 App. Div. 3d 391, 820 N. Y. S. 2d 104.

No. 07–762. HARDY *v.* WILBOURNE. Sup. Ct. Ark. Certiorari denied. Reported below: 370 Ark. 359, 259 S. W. 3d 405.

No. 07–764. HATCH ET VIR *v.* HARPLEY. C. A. 11th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 730.

No. 07–765. STINSON *v.* AMMONS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–768. DAYTONA GRAND, INC., ET AL. *v.* CITY OF DAYTONA BEACH, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 490 F. 3d 860.

No. 07–769. CRAWFORD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 500.

No. 07–770. UNITED STATES EX REL. FOWLER ET AL. *v.* CAREMARK RX, L. L. C., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 496 F. 3d 730.

No. 07–771. PATEL *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 248 Fed. Appx. 365.

No. 07–774. ALDEN *v.* ONANDAGA COUNTY SHERIFF'S DEPARTMENT. Ct. App. N. Y. Certiorari denied. Reported below: 8 N. Y. 3d 1017, 870 N. E. 2d 688.

No. 07–775. ALLSTATE INSURANCE CO. ET AL. *v.* ABBOTT, ATTORNEY GENERAL OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 495 F. 3d 151.

No. 07–777. WRIGHT *v.* ALLSTATE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 500 F. 3d 390.

No. 07–778. ZIPPERER *v.* RAYTHEON CO., INC. C. A. 1st Cir. Certiorari denied. Reported below: 493 F. 3d 50.

No. 07–779. STILLEY *v.* SUPREME COURT OF ARKANSAS COMMITTEE ON PROFESSIONAL CONDUCT. Sup. Ct. Ark. Certiorari denied. Reported below: 370 Ark. 294, 259 S. W. 3d 395.

No. 07–780. AL-JURF *v.* BOARD OF REGENTS, STATE OF IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 737 N. W. 2d 327.

No. 07–783. NOVATO UNIFIED SCHOOL DISTRICT ET AL. *v.* SMITH ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 150 Cal. App. 4th 1439, 59 Cal. Rptr. 3d 508.

No. 07–784. OLSON *v.* CONTINENTAL RESOURCES, INC., ET AL. Ct. App. Okla. Certiorari denied. Reported below: 169 P. 3d 410.

No. 07–786. TAYLOR *v.* ROSE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 502 F. 3d 452.

No. 07–787. KELLEY, INDIVIDUALLY AND AS TRUSTEE *v.* ILLINOIS DEPARTMENT OF TRANSPORTATION. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 375 Ill. App. 3d 1151, 945 N. E. 2d 700.

No. 07–789. COURTNEY ET AL. *v.* HALLERAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 485 F. 3d 942.

No. 07–790. SECRETARY, LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS *v.* KING. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 956 So. 2d 666.

No. 07–792. JOHN CRANE, INC. *v.* JONES, ADMINISTRATRIX OF THE ESTATE OF JONES, DECEASED. Sup. Ct. Va. Certiorari denied. Reported below: 274 Va. 581, 650 S. E. 2d 851.

No. 07–793. UNITED AMERICAN INSURANCE CO. *v.* MERRILL. Sup. Ct. Miss. Certiorari denied. Reported below: 978 So. 2d 613.

No. 07–794. WOLFGANG *v.* CITY OF PITTSBURGH DEPARTMENT OF PERSONNEL & CIVIL SERVICE COMMISSION. Commw. Ct. Pa. Certiorari denied. Reported below: 916 A. 2d 745.

No. 07–797. AYOTTE, ATTORNEY GENERAL OF NEW HAMPSHIRE *v.* SPGGC, LLC, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 488 F. 3d 525.

No. 07–800. DAIICHI SANKYO CO., LTD., ET AL. *v.* APOTEX, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 501 F. 3d 1254.

No. 07–805. JAVITCH, BLOCK & RATHBONE, LLP *v.* GIONIS. C. A. 6th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 24.

No. 07–807. TRIPATI *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–809. GYAMFI *v.* BROWN. Ct. App. D. C. Certiorari denied.

No. 07–810. FARAH, AKA ALI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–813. PORTER *v.* WHITE, SHERIFF, PASCO COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 483 F. 3d 1294.

No. 07–814. BEALER *v.* MUTUAL FIRE, MARINE & INLAND INSURANCE CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 242 Fed. Appx. 802.

No. 07–819. KELLEY *v.* PENNSYLVANIA STATE EMPLOYEES' RETIREMENT BOARD. Sup. Ct. Pa. Certiorari denied. Reported below: 593 Pa. 487, 932 A. 2d 61.

No. 07–821. CHO ET AL. *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 115 Haw. 373, 168 P. 3d 17.

No. 07–823. MORIN *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 142.

No. 07–824. ALSTON *v.* REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA, PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied.

No. 07–829. RODRIGUES ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 178.

No. 07–830. SINGH *v.* BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–831. PALMIERI *v.* ALAMGER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 677.

No. 07–832. KOONIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 761.

No. 07–833. BLACKSTOCK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 746.

No. 07–837. BURKE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Certiorari denied. Reported below: 485 F. 3d 171.

No. 07–844. BRENT *v.* WYNNE, SECRETARY OF THE AIR FORCE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 528.

No. 07–848. OWENS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 371 Ill. App. 3d 1225, 936 N. E. 2d 1237.

No. 07–851. LITTRIELLO *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 484 F. 3d 372.

No. 07–852. LECKEY ET AL. *v.* STEFANO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 501 F. 3d 212.

No. 07–857. MORGAN *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 495 F. 3d 1084.

No. 07–858. SILVA CEJA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 742.

No. 07–860. WOODWARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 320.

No. 07–861. ZAVALIDROGA *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 07–863. LAMA *v.* FRED MEYER, INC. C. A. 9th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 45.

No. 07–865. SWEENEY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied.

No. 07–871. EVANS ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 250 Fed. Appx. 321.

No. 07–875. WHITCOMBE ET UX. *v.* HENAK ET UX. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 816.

No. 07–882. ROSARIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 731.

No. 07–885. FLORIDA J. A. I. L. 4 JUDGES *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 966 So. 2d 966.

No. 07–889. PERSICHILLI *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 613.

No. 07–892. FISCHER *v.* YATES, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 748.

No. 07–895. HOUSE *v.* AMERICAN UNITED LIFE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 499 F. 3d 443.

No. 07–896. GREEN *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 223 Fed. Appx. 994.

No. 07–898. FEHER *v.* JOHN JAY COLLEGE OF CRIMINAL JUSTICE ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 37 App. Div. 3d 307, 830 N. Y. S. 2d 120.

No. 07–908. FOXWORTH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 714.

No. 07–920. BURRUSS ET AL. *v.* EVANS ET AL. Ct. App. Md. Certiorari denied. Reported below: 401 Md. 586, 933 A. 2d 872.

No. 07–921. MARTIN *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 299.

No. 07–928. RIEDL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 496 F. 3d 1003.

No. 07–933. ALSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–939. CLASSE *v.* COLLEGE OF SAINT MARY. Ct. App. Neb. Certiorari denied.

No. 07–940. ALLEN ET AL. *v.* ADVANCED TELECOMMUNICATION NETWORK, INC. C. A. 11th Cir. Certiorari denied. Reported below: 490 F. 3d 1325.

No. 07–951. RAYBORN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 491 F. 3d 513.

No. 07–955. ALMEJO *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 65 M. J. 423.

No. 07–5609. AURELIEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 Fed. Appx. 15.

No. 07–6009. SOLIS-ALVAREZ *v.* UNITED STATES (Reported below: 234 Fed. Appx. 219); HERRERA-TREJO *v.* UNITED STATES (234 Fed. Appx. 218); and VARGAS-VARGAS *v.* UNITED STATES (229 Fed. Appx. 292). C. A. 5th Cir. Certiorari denied.

No. 07–6107. GOODMAN *v.* UTTECHT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–6222. CODINA *v.* MUKASEY, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–6432. STRONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 489 F. 3d 1055.

No. 07–6606. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 165.

No. 07–6725. ALDANA-SANABRIA *v.* UNITED STATES (Reported below: 234 Fed. Appx. 220); CASTILLO-RAMIREZ *v.* UNITED STATES (236 Fed. Appx. 978); PICENO-BAEZ *v.* UNITED STATES (234 Fed. Appx. 221); GUTIERREZ-TOVAR *v.* UNITED STATES (234 Fed. Appx.

217); MENDOZA-TORRES *v.* UNITED STATES (239 Fed. Appx. 75); ARREOLA-HERNANDEZ *v.* UNITED STATES (235 Fed. Appx. 338); PALENCIA-CONTRERAS, AKA GONZELES-HERNANDEZ *v.* UNITED STATES (246 Fed. Appx. 862); and SEQUEDA MORTERA *v.* UNITED STATES (234 Fed. Appx. 222). C. A. 5th Cir. Certiorari denied.

No. 07–6737. SKINNER *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 494 F. 3d 590.

No. 07–6762. MATA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 491 F. 3d 237.

No. 07–6923. FRANK *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 957 So. 2d 724.

No. 07–6971. KIRCHOFF *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–6972. JOSHUA *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 592.

No. 07–6990. HILL *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 285.

No. 07–6994. ROTHROCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 230.

No. 07–7042. LEVINE *v.* NEW JERSEY STATE DEPARTMENT OF COMMUNITY AFFAIRS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 231 Fed. Appx. 125.

No. 07–7044. SORIANO-JARQUIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 492 F. 3d 495.

No. 07–7049. SMITH *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 406.

No. 07–7163. MACKLEM *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 149 Cal. App. 4th 674, 57 Cal. Rptr. 3d 237.

No. 07–7264. LOGAN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 961 So. 2d 946.

No. 07–7292. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 499 F. 3d 817.

No. 07–7322. AYALA PORCAYO *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–7327. RIVERA-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 489 F. 3d 48.

No. 07–7390. KRASKY *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 736 N. W. 2d 636.

No. 07–7392. KING *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 960 So. 2d 413.

No. 07–7496. NOLASCO-GOMEZ, AKA GOMEZ NOLASCO, AKA NOLASCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 563.

No. 07–7539. DEPRIEST *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 42 Cal. 4th 1, 163 P. 3d 896.

No. 07–7548. BELOT *v.* BURGE, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 490 F. 3d 201.

No. 07–7700. GRAY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 491 F. 3d 138.

No. 07–7740. CADIEUX *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 500 F. 3d 37.

No. 07–7796. GORE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 492 F. 3d 1273.

No. 07–7801. RAMIREZ *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7809. SIMS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 07–7810. SIMMONS *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 07–7824. PANDELI *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 215 Ariz. 514, 161 P. 3d 557.

No. 07–7825. PUENTE *v.* MITCHELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7835. WILSON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 174 Md. App. 434, 921 A. 2d 881.

No. 07–7836. TELEGUZ *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 273 Va. 458, 643 S. E. 2d 708.

No. 07–7839. ROSS *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 782.

No. 07–7852. AUSTIN *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 222 S. W. 3d 801.

No. 07–7857. SMITH *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 157 F. 3d 1155.

No. 07–7863. ZARAGOSA *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7866. BROWN *v.* AUSTIN, WARDEN. Sup. Ct. Ill. Certiorari denied.

No. 07–7868. LEE *v.* METRISH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–7871. WHIDEMAN *v.* SKOLNIK, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 509.

No. 07–7872. LAWRENCE *v.* MONTGOMERY COUNTY, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 272.

No. 07–7873. ADLINGTON *v.* INZER, CLERK, CIRCUIT COURT OF FLORIDA, LEON COUNTY. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 963 So. 2d 229.

No. 07–7875. BEA *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 850.

No. 07–7878. PHILLIPS *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–7879. MEADOWS *v.* HOMBECK, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 453.

No. 07–7883. PHIPPEN *v.* NISH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 223 Fed. Appx. 191.

No. 07–7884. MORRIS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied.

No. 07–7885. ANDERSON *v.* AIG AUTO INSURANCE CO. Sup. Ct. Del. Certiorari denied. Reported below: 933 A. 2d 1249.

No. 07–7888. MCKNIGHT *v.* LOUISIANA BOARD OF ELEMENTARY AND SECONDARY EDUCATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 141.

No. 07–7891. BREEN ET UX. *v.* GUTTMAN. C. A. 4th Cir. Certiorari denied.

No. 07–7892. ALBERT *v.* LARSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 635.

No. 07–7895. UPDIKE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 07–7898. WILLIAMS *v.* CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 07–7900. OWENS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 229.

No. 07–7903. OWENS *v.* WRIGHT, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–7905. GIBBS *v.* FRANK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 500 F. 3d 202.

No. 07–7908. MCCRAY *v.* VASBINDER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 499 F. 3d 568.

No. 07–7909. LARA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7912. MANDARINO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7913. CULBERTSON *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 588.

No. 07–7920. WATSON *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 07–7926. ZEPEDA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7928. BOREN *v.* HILL, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 07–7936. BENOIT *v.* SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 492.

No. 07–7945. KENDALL *v.* STATE BAR OF MICHIGAN ET AL. Ct. App. Mich. Certiorari denied.

No. 07–7951. SIMBA *v.* WALKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 98.

No. 07–7956. RATLIFF *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 148.

No. 07–7959. SALINAS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7964. CARTER *v.* H & M DEMOLITION CO. Ct. App. Mich. Certiorari denied.

No. 07–7965. ELLIOTT *v.* CHURCH OF SCIENTOLOGY INTERNATIONAL ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–7966. DAVIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7970. JOHNSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–7978. BLAND *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 07–7981. SHORT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–7983. RAWLS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–7985. LUJAN-ARMENDARIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 925.

No. 07–7990. LEBBOS *v.* SUPERIOR COURT OF CALIFORNIA, SAN JOAQUIN COUNTY. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–7991. JACOB ET AL. *v.* HOUSTON. C. A. 8th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 538.

No. 07–7992. MORRIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–8005. MCLEAN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 208.

No. 07–8010. OCASIO *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8013. SOBEY *v.* BRITTEN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 07–8014. SHEHAB *v.* NEW YORK STATE DEPARTMENT OF TRANSPORTATION. C. A. 2d Cir. Certiorari denied. Reported below: 251 Fed. Appx. 9.

No. 07–8015. STOLLER *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 07–8016. ST. LOUIS *v.* WILSON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 248 Fed. Appx. 343.

No. 07–8019. WYMORE *v.* GREEN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 780.

No. 07–8020. COX *v.* GARDNER. Ct. Civ. App. Ala. Certiorari denied.

No. 07–8025. K. M. P. D. *v.* D. D. D. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 961 So. 2d 1216.

No. 07–8026. PETERSON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 07–8028. DAVIS *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 245 Fed. Appx. 445.

No. 07–8031. MCNATT *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8032. PRYER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 07–8033. TANZI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 964 So. 2d 106.

No. 07–8035. WILLIAMS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 927 A. 2d 659.

No. 07–8036. WALKER *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 69 Mass. App. 137, 866 N. E. 2d 958.

No. 07–8038. CARSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8039. BOWEN *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8040. JAMES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 07–8041. KNUCKLES *v.* ALMLI ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–8043. DIAZ *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 07–8047. LAFAVOR *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8048. LaFOUNTAIN *v.* MICHIGAN. Cir. Ct. Jackson County, Mich. Certiorari denied.

No. 07–8050. PHILLIPS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–8051. SANCHEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8052. RIVERA *v.* CORMANEY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 37.

No. 07–8054. VALENZUELA-RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8057. CARNAIL *v.* WILSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8058. CADDY *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 8th Cir. Certiorari denied.

No. 07–8059. DILLARD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 940.

No. 07–8060. CHAPMAN *v.* HUFFMAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 265.

No. 07–8061. CORNELL *v.* HALL, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 07–8062. CRUZ *v.* WILSON. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 270.

No. 07–8063. EVANS *v.* McDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–8064. DICKERSON *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8068. RODEN ET AL. *v.* UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. C. A. 4th Cir. Certiorari denied.

No. 07–8070. SMITH *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 966 So. 2d 596.

No. 07–8071. MARKLAND *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–8074. WHEELER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 967 So. 2d 218.

No. 07–8075. ZUNIGA *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 463.

No. 07–8079. LIVINGSTON *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8084. STONE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 07–8085. SPAHI *v.* MUKASEY, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 247 Fed. Appx. 258.

No. 07–8086. GORE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 964 So. 2d 1257.

No. 07–8088. HERNANDEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8089. GRAVES *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8094. GUARDADO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 965 So. 2d 108.

No. 07–8098. GREENHALGH *v.* OREGON. C. A. 9th Cir. Certiorari denied.

No. 07–8099. HARPER *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 773.

No. 07–8100. HASSETT *v.* KEARNEY, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8102. GOMEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8104. DAVIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 373 Ill. App. 3d 351, 869 N. E. 2d 339.

No. 07–8105. MAHADAY *v.* CASON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 542.

No. 07–8106. MACIEL *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8107. MARTIN *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8108. KENNEDY *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO. C. A. 10th Cir. Certiorari denied.

No. 07–8109. HAHN *v.* CORRECTIONAL MEDICAL SERVICES, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–8112. PEREZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8114. IBARRA PINEDA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8117. SMITH *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 967 So. 2d 204.

No. 07–8118. WADLEY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8119. ASGARI *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8124. BROOKS *v.* O'BRIEN, SUPERINTENDENT, NORTH CENTRAL CORRECTIONAL INSTITUTION. C. A. 1st Cir. Certiorari denied.

No. 07–8126. SMITH *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8127. REED *v.* PETERSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 279.

No. 07–8128. WALKER *v.* FRESNO POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 525.

No. 07–8130. HARDY *v.* SUTTON, SUPERINTENDENT, PASQUOTANK CORRECTIONAL CENTER, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 411.

No. 07–8131. GUARDADO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8135. GUZMAN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8137. HOBLEY *v.* KFC U. S. PROPERTIES, INC. C. A. D. C. Cir. Certiorari denied.

No. 07–8138. GRIFFIN *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 07–8141. HISTON *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8142. HEBBE *v.* KANE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8143. FRIER *v.* WATTERS. C. A. 7th Cir. Certiorari denied.

No. 07–8145. FOSTER *v.* CLAYTON JUDICIAL CIRCUIT OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8146. HUGGHIS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 07–8148. PRIDGEN *v.* NISH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8149. MCHAM *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 118.

No. 07–8151. GONZALEZ CANTU *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 07–8152. CRESPO *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–8154. SMART *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 501 F. 3d 862.

No. 07–8155. MINGO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 860.

No. 07–8156. PAYTON *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–8158. PAYNE *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8163. CAVANAGH *v.* LAMANNA, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 274.

No. 07–8164. LYNCH *v.* MOULD FOUNDATION. Sup. Ct. Ohio. Certiorari denied. Reported below: 114 Ohio St. 3d 1509, 872 N. E. 2d 951.

No. 07–8165. WESTBROOKS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 151 Cal. App. 4th 1500, 61 Cal. Rptr. 3d 138.

No. 07–8170. MCKINNEY *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8172. VAN *v.* BARTOS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 221.

No. 07–8173. BUTLER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–8174. AIZUPITIS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 933 A. 2d 1249.

No. 07–8177. BENNETT *v.* NELSON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 219 Fed. Appx. 265.

No. 07–8179. BROWN *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS. C. A. 3d Cir. Certiorari denied.

No. 07–8181. ARCENEAUX *v.* LEGER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 876.

No. 07–8183. ALEMAN *v.* HUBERT ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–8187. BARNETT *v.* HOOKS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8188. WESTERFIELD *v.* WALKER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8189. SANCHEZ *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8192. ROWAN *v.* COURT OF APPEALS OF MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 07–8195. DAVIS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 491 F. 3d 804.

No. 07–8200. BELL *v.* LYONS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 595.

No. 07–8201. MATTERN *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 07–8202. MCKIVER *v.* NEW YORK CITY POLICE DEPARTMENT ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–8204. VALDEZ *v.* HATCH, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 864.

No. 07–8205. TACKETT *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 144 Cal. App. 4th 445, 50 Cal. Rptr. 3d 449.

No. 07–8206. CORONA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8208. MURRAY *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8213. HOYOS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 872, 162 P. 3d 528.

No. 07–8214. HALL *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–8215. HOLZHAUSER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8216. HEON *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 931 A. 2d 1068.

No. 07–8217. GONZALES *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8222. WILLIAMS *v.* ERIE INSURANCE. Ct. App. Ohio, Summit County. Certiorari denied.

No. 07–8224. GONZALEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 368 Ill. App. 3d 1217, 931 N. E. 2d 365.

No. 07–8226. HOUSER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8227. GRAY *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 07–8230. GUTIANEZ *v.* PARKER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 349.

No. 07–8231. GIBBS *v.* JACKSON, DEPUTY WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8232. HILL *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 07–8235. CLEVELAND ET VIR *v.* OKLAHOMA ET AL. Ct. Civ. App. Okla. Certiorari denied.

No. 07–8236. DAVIS *v.* MCBRIDE, WARDEN. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 221 W. Va. 240, 654 S. E. 2d 364.

No. 07–8238. GROSSIE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–8239. GROENKE *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 302 Wis. 2d 262, 732 N. W. 2d 864.

No. 07–8240. AL HUMRANI *v.* BAUMAN. C. A. 6th Cir. Certiorari denied.

No. 07–8241. HEARNES *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8243. HOWELL *v.* BROOKS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION. C. A. 3d Cir. Certiorari denied.

No. 07–8245. GORDON *v.* PINION, SUPERINTENDENT, PIEDMONT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 200 Fed. Appx. 224.

No. 07–8246. FOX *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 242 Fed. Appx. 759.

No. 07–8247. HERNANDEZ *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 65 M. J. 314.

No. 07–8248. THORPE *v.* BURNS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8249. YOUNG *v.* SIRMONS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 486 F. 3d 655.

No. 07–8250. RAINEY *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied.

No. 07–8251. RUDD *v.* WERHOLTZ, SECRETARY, KANSAS DEPARTMENT OF CORRECTIONS. Sup. Ct. Kan. Certiorari denied.

No. 07–8252. RETHAGE *v.* CORBETT, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8253. RAMIREZ *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 07–8254. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 391.

No. 07–8255. AWALA *v.* CLEMENT, SOLICITOR GENERAL OF THE UNITED STATES, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8256. MUSTELIER *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 965 So. 2d 192.

No. 07–8257. TURNS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 708.

No. 07–8259. BASNIGHT *v.* HAMPTON ROADS SHIPPING ASSN. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 982.

No. 07–8260. JONES *v.* WILD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 532.

No. 07–8262. TARANGO *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 07–8264. HARRIS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 204 Fed. Appx. 327.

No. 07–8266. GRAY *v.* RIVERSIDE COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 552.

No. 07–8267. FEATHERSTONE *v.* BOYD ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–8268. HUDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 16.

No. 07–8269. HERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 35.

No. 07–8270. GONCHAROFF *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8271. HULL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 543.

No. 07–8278. FLOURNOY *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–8279. HEFFLIN *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8280. HILL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 57.

No. 07–8281. GONZALEZ-NOGUEZ, AKA MORALES-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 441.

No. 07–8282. GONZALEZ-LARREA, AKA LARREA GONZALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 795.

No. 07–8283. HEAD *v.* BENTON, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 07–8284. CARDENA-SOSA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 312.

No. 07–8285. DACRE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 866.

No. 07–8287. PARIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–8289. MILLER *v.* KUEHN, ASSOCIATE JUDGE, TULSA COUNTY, OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 07–8290. ELLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8293. TACKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 233 Fed. Appx. 649.

No. 07–8294. THOMAS *v.* MCBRIDE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 622.

No. 07–8295. JOSEPH *v.* UNITED STATES. Ct. Crim. App. Tex. Certiorari denied.

No. 07–8296. LANIER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–8297. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 757.

No. 07–8298. B. L. *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 22 So. 3d 532.

No. 07–8299. MILLER *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS. C. A. 3d Cir. Certiorari denied.

No. 07–8300. PECK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 496 F. 3d 885.

No. 07–8301. MILLHOUSE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8303. POWELL *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8304. RAHMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 241 Fed. Appx. 774.

No. 07–8307. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 502 F. 3d 680.

No. 07–8308. LAPINE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–8309. JACKMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–8310. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 535.

No. 07–8311. CORNIA *v.* UNIVERSITY OF TEXAS MEDICAL BRANCH/DALLAS COUNTY JAIL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 333.

No. 07–8312. BLACKSHEAR *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8313. BUTLER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 965 So. 2d 1153.

No. 07–8314. BUCKLEY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 07–8316. CLARK *v.* BURNETTE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–8317. CORBETT *v.* TAYLOR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 358.

No. 07–8318. DOYLE *v.* LIBERTY SAVINGS BANK. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 07–8319. CALDWELL *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8321. MINNFEE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8322. PACK *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8324. MURILLO-GOCHES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 566.

No. 07–8325. WILCHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 398.

No. 07–8326. WOGOMAN *v.* ABRAMAJTYS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 885.

No. 07–8327. MEDELIUS-RODRIGUEZ *v.* STRICKLAND. C. A. 4th Cir. Certiorari denied.

No. 07–8328. OWENS *v.* HAGAN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 83.

No. 07–8329. BOWMAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 966 So. 2d 965.

No. 07–8331. ABRAM *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–8333. OLOLADE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8334. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–8335. WILLIAMS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 958 So. 2d 480.

No. 07–8337. PHILLIPS *v.* PLUNKETT. C. A. 8th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 189.

No. 07–8338. DAVIS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8339. TRAINOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–8341. TEKLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–8343. REYNOSO *v.* SWEZEY. C. A. 2d Cir. Certiorari denied. Reported below: 238 Fed. Appx. 660.

No. 07–8345. SUMBLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 982.

No. 07–8346. ROBINSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 07–8348. WARREN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–8349. JENKINS *v.* UNGER, SUPERINTENDENT, ORLEANS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–8354. HOBLEY *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied.

No. 07–8358. IEZZI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 222 Fed. Appx. 208.

No. 07–8359. FRANCIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 68.

No. 07–8360. GOODWIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 229 Fed. Appx. 49.

No. 07–8361. GREEN *v.* LAMANNA, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 293.

No. 07–8363. DEJESUS HERNANDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 972.

No. 07–8365. FITCH *v.* ADAMS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 435.

No. 07–8366. FOUNTAIN *v.* YATES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 213.

No. 07–8367. HARDRIDGE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 412.

No. 07–8369. HOGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 324.

No. 07–8370. HADDOCK *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 927 A. 2d 651.

No. 07–8371. FRANKLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–8373. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 3d 745.

No. 07–8375. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 493 F. 3d 928.

No. 07–8376. FISHER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8377. HASTINGS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 965 So. 2d 122.

No. 07–8379. WORRELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 960.

No. 07–8382. GODDARD *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 491 F. 3d 457.

No. 07–8383. FICKEN *v.* RICE, SECRETARY OF STATE, ET AL.; and FICKEN *v.* LUNDEBYE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 07–8384. MARTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 568.

No. 07–8385. MADINA *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–8387. HARRINGTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 241 Fed. Appx. 777.

No. 07–8389. WHIRLWIND SOLDIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 499 F. 3d 862.

No. 07–8391. JACKSON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 07–8392. BRIGGS *v.* HARGRETT ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–8395. BAILEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 768.

No. 07–8397. SNOWDEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 175.

No. 07–8398. ROSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 543.

No. 07–8400. STILL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 30.

No. 07–8401. SEMIEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 615.

No. 07–8402. BRADLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 07–8404. DANG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 3d 1135.

No. 07–8405. ESPINOZA-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 374.

No. 07–8406. ESPINOZA-REBOLLAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 547.

No. 07–8407. DWYER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 238 Fed. Appx. 631.

No. 07–8408. CARVAJAL-OSORIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 636.

No. 07–8409. DEJOHNETTE *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 373 Ill. App. 3d 1169, 943 N. E. 2d 340.

No. 07–8410. BRADFORD *v.* UNUM LIFE INSURANCE COMPANY OF AMERICA. C. A. 11th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 937.

No. 07–8412. SULLIVAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 955.

No. 07–8413. CAMACHO *v.* JOHNS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–8414. SWINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 760.

No. 07–8415. DANIELS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 248 Fed. Appx. 387.

No. 07–8416. EASTER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–8418. CHISUM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 502 F. 3d 1237.

No. 07–8420. JIMENEZ-DEGARCIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 830.

No. 07–8422. JAMAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 302.

No. 07–8423. MACK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 895.

No. 07–8425. BROGDON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 503 F. 3d 555.

No. 07–8426. BUNN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 07–8430. ALEXANDRE *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–8437. PETERSON *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 07–8440. SPANN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 243 Fed. Appx. 689.

No. 07–8442. REVELL *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 372 Ill. App. 3d 981, 868 N. E. 2d 318.

No. 07–8443. SILVA-VALENCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 847.

No. 07–8444. SINERIUS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 504 F. 3d 737.

No. 07–8445. SALAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 906.

No. 07–8447. CAPRI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–8448. CROSS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 371 Ill. App. 3d 1201, 936 N. E. 2d 1226.

No. 07–8449. COLLINS, AKA KENT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–8451. GONZALEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 249 Fed. Appx. 859.

No. 07–8452. FISHER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8455. THONGSOPHAPORN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 503 F. 3d 51.

No. 07–8456. VAN PATTEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 675.

No. 07–8458. WADE *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 373 Ill. App. 3d 1184, 943 N. E. 2d 347.

No. 07–8459. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 571.

No. 07–8460. MYERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 503 F. 3d 676.

No. 07–8463. ROBERTSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 493 F. 3d 1322.

No. 07–8465. SEGUI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 785.

No. 07–8466. SOTELO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 373.

No. 07–8467. JONES *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 373 Ill. App. 3d 1103, 940 N. E. 2d 309.

No. 07–8468. KINARD *v.* PALAKOVICH, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8469. JOHN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 243 Fed. Appx. 660.

No. 07–8474. SPERBERG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–8475. RICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8477. SMITH *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8478. LOPEZ-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 996.

No. 07–8479. KINEY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 151 Cal. App. 4th 807, 60 Cal. Rptr. 3d 168.

No. 07–8480. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 488.

No. 07–8482. BURKS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 369 Ill. App. 3d 1046, 932 N. E. 2d 1220.

No. 07–8484. VILLARREAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 376.

No. 07–8489. HARVEY *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: Ill. App. 3d 1139, 375 Ill. App. 3d 1153, 944 N. E. 2d 931.

No. 07–8492. HRONEK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 134.

No. 07–8494. GONZALEZ-ROBLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 399.

No. 07–8496. FARRINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 499 F. 3d 854.

No. 07–8501. NICARRY *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–8504. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–8505. ZACAROLO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 165.

No. 07–8507. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–8511. WATERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–8517. HOWARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 556.

No. 07–8518. GARZA, AKA GARZA-GARZA, AKA DIAZ-GARZA *v.* UNITED STATES (Reported below: 250 Fed. Appx. 67); PENA-HERNANDEZ *v.* UNITED STATES (243 Fed. Appx. 883); RODA-LOPEZ *v.* UNITED STATES (251 Fed. Appx. 967); MORALES-MARTINEZ *v.* UNITED STATES (253 Fed. Appx. 364); MOLINA-CUELLAR, AKA LOPEZ *v.* UNITED STATES (249 Fed. Appx. 371); BELMARES-HERNANDEZ *v.* UNITED STATES (253 Fed. Appx. 418); CASTILLO-GONZALEZ *v.* UNITED STATES (256 Fed. Appx. 723); and GONZALEZ-GUERRA *v.* UNITED STATES (253 Fed. Appx. 439). C. A. 5th Cir. Certiorari denied.

No. 07–8522. CASTRO-CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 378.

No. 07–8526. LYE HUAT ONG *v.* SOWERS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied.

No. 07–8528. PEREZ *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8529. MCCOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 227 Fed. Appx. 301.

No. 07–8531. JENNINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 496 F. 3d 344.

No. 07–8532. MARQUEZ-MADRID *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 953.

No. 07–8533. MATA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 352.

No. 07–8534. MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 385.

No. 07–8537. BAROODY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 765.

No. 07–8539. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 587.

No. 07–8540. BIRTH *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 37 Kan. App. 2d 753, 158 P. 3d 345.

No. 07–8549. JONES *v.* GIAMBRUNO, SUPERINTENDENT, WYOMING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–8550. MARO *v.* MARTINEZ, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–8553. COOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 267.

No. 07–8556. O'BRYAN *v.* MARBERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8558. LAYMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 206.

No. 07–8559. LOTT *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8562. ARANGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–8564. BAILEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 932 A. 2d 248.

No. 07–8566. BALDERAS-RUBIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 499 F. 3d 470.

No. 07–8567. AGUILAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 503 F. 3d 431.

No. 07–8569. RIVERA-CORA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–8570. SERNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 27.

No. 07–8571. BARNES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 15.

No. 07–8573. TALLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8576. ZISKIND *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 491 F. 3d 10.

No. 07–8582. CASTILLO-VARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 381.

No. 07–8585. COOPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–8595. RUBIO-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 382.

No. 07–8596. RUPERT *v.* OHIO. Ct. App. Ohio, Lake County. Certiorari denied.

No. 07–8597. RODRIGUEZ-ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 381.

No. 07–8600. UMANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 75.

No. 07–8601. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 367.

No. 07–8603. TAYLOR *v.* RYKER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–8605. BURTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 249 Fed. Appx. 882.

No. 07–8606. BOSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 807.

No. 07–8607. ALVAREZ-DE GORDILS *v.* UNITED STATES (Reported below: 249 Fed. Appx. 362); BAUTISTA-AVILA, AKA BAUTISTA *v.* UNITED STATES (249 Fed. Appx. 365); CONTRERAS-PUENTE *v.* UNITED STATES (249 Fed. Appx. 368); ESPARZA-LEYVA *v.* UNITED STATES (249 Fed. Appx. 366); ESTRADA-VILLA *v.* UNITED STATES (249 Fed. Appx. 369); GARCIA *v.* UNITED STATES (249 Fed. Appx. 364); PALACIOS-TRUJILLO *v.* UNITED STATES (249 Fed. Appx. 383); REYES-MEJIA *v.* UNITED STATES (249 Fed. Appx. 362); ROSALES-RODRIGUEZ, AKA GONZALEZ *v.* UNITED STATES (249 Fed. Appx. 363); TABORDA-PATINO *v.* UNITED STATES (249

Fed. Appx. 364); and TREVINO-RAMOS *v.* UNITED STATES (249 Fed. Appx. 367). C. A. 5th Cir. Certiorari denied.

No. 07–8608. SOLIS-ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 632.

No. 07–8611. SULLIVAN *v.* GEREN, SECRETARY OF THE ARMY, ET AL. C. A. 10th Cir. Certiorari denied.

No. 07–8620. DUDLEY *v.* RIVERA, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 189.

No. 07–8621. KARIM E., A JUVENILE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–8622. ROJAS COBIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 648.

No. 07–8623. CORLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 454.

No. 07–8629. SALAZAR, AKA ZAPATA *v.* MILYARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 891.

No. 07–8630. POWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 194.

No. 07–8631. PENNIMAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8632. MCDERMOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8633. MOSQUERA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–8634. PEREZ-TAPIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 416.

No. 07–8636. LOPEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 250 Fed. Appx. 381.

No. 07–8640. VALENTINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 488 F. 3d 325.

No. 07–8642. TUCKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 763.

No. 07–8644. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 423.

No. 07–8650. PELCHAT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–8654. SPENCE *v.* YANCEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 279.

No. 07–8657. ARVIZU-CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 365.

No. 07–8658. ADAIR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 650.

No. 07–8659. BOGARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 619.

No. 07–8660. BONILLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 795.

No. 07–8666. CANDELIER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–8667. ESPINO-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–8672. HABBEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 972.

No. 07–8673. FRENCH *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 943 So. 2d 1279.

No. 07–8674. YOUMANS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 249 Fed. Appx. 907.

No. 07–8678. BELTRAN-AVELOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 767.

No. 07–8679. MANCERA-PEREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 505 F. 3d 1054.

No. 07–8680. PEREZ-JIMINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 93.

No. 07–8686. AUSTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 905.

No. 07–8691. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 538.

No. 07–8695. EVANS *v.* PEARSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8698. REYES-CEBALLOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 590.

No. 07–8701. SAUCEDO-VALVERDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 796.

No. 07–8704. MALVASI ET AL. *v.* UNITED STATES DEPARTMENT OF PROBATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 11.

No. 07–8705. LEE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 502 F. 3d 691.

No. 07–8707. BANKS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–8708. BELTRAN-LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 928.

No. 07–8715. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 579.

No. 07–8717. HOPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 250 Fed. Appx. 502.

No. 07–8720. HEROD *v.* UNITED STATES; and
No. 07–8767. MORAN OCEGUEDA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 699.

No. 07–8722. FOWLER *v.* JETER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 649.

No. 07–8726. GATES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8727. GUARDIOLA-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 380.

No. 07–8728. HURD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 499 F. 3d 963.

No. 07–8734. PIZANO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 491.

No. 07–8735. FRENCHER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 503 F. 3d 701.

No. 07–8737. FADL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 498 F. 3d 862.

No. 07–8738. DOWNING *v.* CONNELL, SUPERINTENDENT, ONEIDA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 256 Fed. Appx. 410.

No. 07–8746. ROBERTS *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 250 Fed. Appx. 346.

No. 07–8751. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–8755. ARREVALO-OLVERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 495 F. 3d 1211.

No. 07–8757. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–8759. EBERSOLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 63.

No. 07–8760. CARR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 217.

No. 07–8761. DJENASEVIC, AKA GENASE, AKA KRAJA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 135.

No. 07–8762. DOMINGUEZ-CASTORENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 626.

No. 07–8766. PARKES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 497 F. 3d 220.

No. 07–8768. JIMENEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 507 F. 3d 13.

No. 07–8769. MALLETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 614.

No. 07–8771. CASTILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 295.

No. 07–8774. ALCARAZ-BARRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 968.

No. 07–8778. REDMOND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 655.

No. 07–8780. RUTHKOWSKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–8782. SPADAFINA *v.* RANEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8785. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 626.

No. 07–8786. ESPARZA-PEREZ, AKA SANDOVAL-CALDEROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 813.

No. 07–8788. ERBO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–8794. CUEVAS LUGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 651.

No. 07–8796. MASO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–8799. PARKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 505 F. 3d 323.

No. 07–8800. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–8803. RESTREPO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 250 Fed. Appx. 434.

No. 07–8805. BOWDEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 56.

No. 07–8806. VEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 812.

No. 07–8807. TRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 504 F. 3d 561.

No. 07–8810. HOLLINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 498 F. 3d 622.

No. 07–8812. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 640.

No. 07–8813. INTROCASO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 506 F. 3d 260.

No. 07–8818. BALDWIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 496 F. 3d 215.

No. 07–8823. ABU MEZER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–8825. BOKEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 604.

No. 07–8826. AQUINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 241 Fed. Appx. 775.

No. 07–8830. YOUNG *v.* GUTIERREZ, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 91.

No. 07–8834. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 997.

No. 07–8840. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 818.

No. 07–8845. ANDRADE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 274.

No. 07–8846. DAILY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 488 F. 3d 796.

No. 07–8848. TAYLOR *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 497 F. 3d 673.

No. 07–8850. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 534.

No. 07–8852. STAMPS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 324.

No. 07–8858. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 636.

No. 07–8862. NELSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 373 Ill. App. 3d 1151, 943 N. E. 2d 333.

No. 07–8864. JENNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 917.

No. 07–8866. KAMA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 251 Fed. Appx. 121.

No. 07–8869. RODRIGUES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 358.

No. 07–8872. COLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 112.

No. 07–8876. RESPER *v.* MINER, WARDEN. C. A. D. C. Cir. Certiorari denied.

No. 07–8883. LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 908.

No. 07–8889. RISHSER *v.* OUTLAW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8890. LINDSEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 507 F. 3d 1146.

No. 07–8891. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 119.

No. 07–8895. RODRIGUEZ-CORREA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 602.

No. 07–8897. KEMP *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 500 F. 3d 257.

No. 07–8900. LYNCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–8912. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 506 F. 3d 151.

No. 07–8913. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 43.

No. 07–8916. WORTH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 909.

No. 07–8917. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 506 F. 3d 151.

No. 07–8918. WASSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 580.

No. 07–8924. MARVIN *v.* MENIFEE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–460. GROFF ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Motion of Associated Air Tanker Pilots and Aerial Firefighters et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 493 F. 3d 1343.

No. 07–630. SCOTT *v.* METROPOLITAN HEALTH CORP., DBA METROPOLITAN HOSPITAL, ET AL. C. A. 6th Cir. Motion of National Employment Lawyers Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 234 Fed. Appx. 341.

No. 07–651. ENTERGY CORP. ET AL. *v.* JENKINS ET AL. Ct. App. Tex., 13th Dist. Motion of Edison Electric Institute for leave to file a brief as *amicus curiae* out of time denied. Certiorari denied. Reported below: 187 S. W. 3d 785.

No. 07–653. NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION *v.* SIMPSON. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 490 F. 3d 1029.

No. 07–683. SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* MOLINA LOPEZ. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 491 F. 3d 1029.

No. 07–728. SPADARO *v.* CITY OF RIALTO, CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Motions of American Dog Owners Association and Jon Roland of the Constitution Society for leave to file briefs as *amici curiae* granted. Certiorari denied.

No. 07–815. ALL COMPUTERS, INC. *v.* INTEL CORP. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 224 Fed. Appx. 976.

No. 07–8159. MILLER *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 235 Fed. Appx. 386.

No. 07–8288. NORWOOD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 07–8545. TELLINGS *v.* CITY OF TOLEDO, OHIO. Sup. Ct. Ohio. Motion of American Rottweiler Club, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 114 Ohio St. 3d 278, 871 N. E. 2d 1152.

No. 07–8736. GRUNDY *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 248 Fed. Appx. 448.

Rehearing Denied

No. 06–11530. JOHNSON *v.* YATES, WARDEN, *ante*, p. 850;

No. 06–11707. IN RE YOUNG, *ante*, p. 808;

No. 06–11738. CONCEPCION *v.* UNITED STATES, *ante*, p. 861;

No. 06–11802. EASTMAN *v.* TROPICANA PRODUCTS, INC., *ante*, p. 1037;

No. 07–347. PRATT *v.* PRATT, *ante*, p. 1039;

No. 07–396. PAVLOV ET UX. *v.* INGLES MARKETS, INC., *ante*, p. 1040;

No. 07–579. IN RE MILES ET AL., *ante*, p. 1037;

No. 07–5355. JOHNSON *v.* UNITED STATES, *ante*, p. 912;

No. 07–5464. MARTOCCI ET UX. *v.* BOWASKIE ICE HOUSE ET AL., *ante*, p. 918;

No. 07–6270. BRYDON *v.* UNITED STATES, *ante*, p. 1064;

No. 07–6320. MARLIN *v.* MARQUEZ ET AL., *ante*, p. 1024;

No. 07–6345. STURGIS ET AL. *v.* MICHIGAN DEPARTMENT OF HUMAN SERVICES, *ante*, p. 1024;

No. 07–6426. MARTIN *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 1000;

No. 07–6438. THOMAS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1026;

No. 07–6492. ALEXANDER *v.* SPARTENBURG PUBLIC SAFETY DEPARTMENT ET AL., *ante*, p. 1027;

No. 07–6552. WHITTEN *v.* MICHIGAN, *ante*, p. 1028;

No. 07–6584. LANE *v.* CHAPIN, *ante*, p. 1044;

No. 07–6612. BARNETT *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1044;

No. 07–6624. MORGAN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1044;

No. 07–6633. WATERS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1045;

No. 07–6642. VALDEZ-BAUTISTA *v.* MUKASEY, ATTORNEY GENERAL, *ante*, p. 1029;

No. 07–6659. IN RE WINDING, *ante*, p. 1037;

No. 07–6686. SHARP *v.* MINNESOTA, *ante*, p. 1046;

No. 07–6724. BRANTLEY *v.* FLORIDA, *ante*, p. 1046;

No. 07–6753. SCOTT *v.* ILLINOIS, *ante*, p. 1029;

No. 07–6824. DIAZ *v.* CALIFORNIA, *ante*, p. 1065;

No. 07–6851. JAMISON *v.* WEST VALLEY CITY, UTAH, ET AL., *ante*, p. 1066;

No. 07–6856. WYNN *v.* FLORIDA (three judgments), *ante*, p. 1048;

No. 07–6858. WILSON *v.* GILES, WARDEN, ET AL., *ante*, p. 1066;

No. 07–6868. YOUNG *v.* SULLIVAN, WARDEN, *ante*, p. 1066;

No. 07–6878. PRICE, AKA ROCK *v.* UNITED STATES, *ante*, p. 1048;

No. 07–6881. SELENSKY *v.* MOBILE INFIRMARY ET AL., *ante*, p. 1067;

No. 07–6910. MARTINEZ, AKA SAUCEDO CALDERON *v.* HERNANDEZ, WARDEN, *ante*, p. 1048;

No. 07–6921. GRANDOIT *v.* LIBERTY MUTUAL INSURANCE CO., *ante*, p. 1077;

No. 07–6928. HOKENSTROM *v.* CATTELL, WARDEN, *ante*, p. 1048;

No. 07–6950. PORTER *v.* BERGHUIS, WARDEN, *ante*, p. 1078;

No. 07–6960. EVANS *v.* KILLIAN, BANKRUPTCY JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, ET AL., *ante*, p. 1105;

No. 07–6979. PARIAG *v.* UNITED STATES, *ante*, p. 1068;

No. 07–7021. HALPIN *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1019;

No. 07–7186. VIG *v.* CHUBB INSURANCE CO. ET AL., *ante*, p. 1110;

No. 07–7253. WILLIAMS *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1112;

No. 07–7274. VAN SWAIT *v.* EVANS, WARDEN, *ante*, p. 1079;

No. 07–7332. HALL *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1114;

No. 07–7370. SAUNDERS-EL *v.* UNITED STATES, *ante*, p. 1116;

No. 07–7373. WILLIAMS *v.* ST. VINCENT HOSPITAL ET AL., *ante*, p. 1116; and

No. 07–7566. LANG *v.* UNITED STATES, *ante*, p. 1083. Petitions for rehearing denied.

No. 07–5243. BROWN *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA, ET AL., *ante*, p. 906; and

No. 07–6312. ALLEN *v.* MARSTILLAR, ASSISTANT ATTORNEY GENERAL OF FLORIDA, *ante*, p. 1012. Motions for leave to file petitions for rehearing denied.

FEBRUARY 22, 2008

Miscellaneous Order

No. 07–1054. GATES, SECRETARY OF DEFENSE, ET AL. *v.* BISMULLAH ET AL. C. A. D. C. Cir. Respondents are directed to file a response to the petition for writ of certiorari on or before 2 p.m., Tuesday, March 4, 2008. Petitioners may file a reply brief on or before 2 p.m., Tuesday, March 11, 2008. Briefs of *amici curiae* supporting any party are to be filed on or before 2 p.m., Tuesday, March 4, 2008.

FEBRUARY 25, 2008

Certiorari Granted—Vacated and Remanded

No. 06–10446. RHOADES *v.* IDAHO. Sup. Ct. Idaho;

No. 06–10841. MCKINNEY *v.* IDAHO. Sup. Ct. Idaho. Reported below: 143 Idaho 590, 150 P. 3d 283;

No. 06–11010. PIZZUTO *v.* IDAHO. Sup. Ct. Idaho;

No. 06–12010. CARD *v.* IDAHO. Sup. Ct. Idaho;

No. 07–5634. HAIRSTON *v.* IDAHO. Sup. Ct. Idaho. Reported below: 144 Idaho 51, 156 P. 3d 552; and

No. 07–6393. LAVE *v.* TEXAS. Ct. Crim. App. Tex. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Danforth* v. *Minnesota*, *ante*, p. 264.

No. 07–8863. JENKINS *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kimbrough* v. *United States*, *ante*, p. 85. Reported below: 505 F. 3d 812.

Certiorari Dismissed

No. 07–8461. STRINGER *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 252 Fed. Appx. 645.

No. 07–8960. AWALA *v.* ROBERTS, CHIEF JUSTICE OF THE UNITED STATES, ET AL.; and AWALA *v.* CITY OF CHICAGO, ILLINOIS. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. THE CHIEF JUSTICE and JUSTICE ALITO took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. 07A602. PATRIDGE *v.* UNITED STATES. C. A. 7th Cir. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 07M42. NARAYANAN *v.* CITY OF NEW YORK, NEW YORK, ET AL.;

No. 07M43. NOESGES *v.* TORRES, ARIZONA REGISTRAR OF CONTRACTORS, ET AL.;

No. 07M44. IBRAHIM *v.* IBRAHIM;

No. 07M45. BARTNOF *v.* MESSINGER ET AL.;

No. 07M46. WHITEHURST *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY; and

No. 07M47. DUMAS *v.* GENESEE COUNTY COMMUNITY MENTAL HEALTH. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 105, Orig. KANSAS *v.* COLORADO. Fifth and Final Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed within 45 days. Replies, if any, with supporting briefs, may be filed within 30 days. Motion of the Special Master for interim fees and expenses granted, and the Special Master is awarded a total of $88,515.30 for the period January 1, 2006, through December 31, 2007, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 546 U. S. 1166.]

No. 06–939. CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA ET AL. *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1035.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–290. DISTRICT OF COLUMBIA ET AL. *v.* HELLER. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1035.] Motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for divided argument and, in the alternative, for enlargement of time for oral argument denied. Motion of the Solicitor General for enlargement of time for oral argument and for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–8544. IN RE WILLIAMS; and

No. 07–9119. IN RE WILLIAMS. Petitions for writs of habeas corpus denied.

No. 07–8350. IN RE ALPINE. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 07–526. CARCIERI, GOVERNOR OF RHODE ISLAND, ET AL. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A.

1st Cir. Motion of Citizens Equal Rights Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 497 F. 3d 15.

No. 07–542. ARIZONA *v.* GANT. Sup. Ct. Ariz. Motion of National Association of Police Organizations, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari granted limited to the following question: "Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured?" Reported below: 216 Ariz. 1, 162 P. 3d 640.

No. 07–544. CHRONES, WARDEN *v.* PULIDO. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 487 F. 3d 669.

Certiorari Denied

No. 06–1262. BAKER ET AL. *v.* ST. JUDE MEDICAL, S. C., INC., ET AL. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 178 S. W. 3d 127.

No. 07–515. CARPENTER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 494 F. 3d 13.

No. 07–527. DARDEN *v.* PETERS, REGISTER OF COPYRIGHTS. C. A. 4th Cir. Certiorari denied. Reported below: 488 F. 3d 277.

No. 07–547. LOPEZ *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 106.

No. 07–553. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 487 F. 3d 840.

No. 07–656. CONVOLVE, INC., ET AL. *v.* SEAGATE TECHNOLOGY, LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 497 F. 3d 1360.

No. 07–658. NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 475 F. 3d 1277.

No. 07–660. MYERS *v.* CENTRAL FLORIDA INVESTMENTS, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 452.

No. 07–684. LIBERTY ELECTRIC POWER, LLC *v.* NATIONAL ENERGY & GAS TRANSMISSION, INC., FKA PG&E NATIONAL ENERGY GROUP, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 492 F. 3d 297.

No. 07–688. BOLIN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 123 Nev. 8, 210 P. 3d 710.

No. 07–691. DALE ET AL. *v.* STEPHENS COUNTY, GEORGIA, SCHOOL DISTRICT. C. A. 11th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 603.

No. 07–692. DALE ET AL. *v.* WHITE COUNTY, GEORGIA, SCHOOL DISTRICT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 481.

No. 07–715. TUNNELL *v.* FORD MOTOR CO. C. A. 4th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 283.

No. 07–817. VECCHIOLI *v.* BOREL PRIVATE BANK & TRUST CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 568.

No. 07–825. BLANCHARD *v.* MORTON SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 509 F. 3d 934.

No. 07–874. ESTATE OF LEGO *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 10th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 227.

No. 07–879. AUTOTECH TECHNOLOGIES LP *v.* INTEGRAL RESEARCH & DEVELOPMENT CORP. C. A. 7th Cir. Certiorari denied. Reported below: 499 F. 3d 737.

No. 07–944. LIVING CARE ALTERNATIVES OF KIRKERSVILLE, INC., ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 687.

No. 07–971. BEESON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–974. VALLES-ZAMORA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 701.

No. 07–5324. PORTILLO-VEGA, AKA GALVAN, AKA ALCARAS-GALVAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 478 F. 3d 1194.

No. 07–6874. DIAZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 886.

No. 07–7091. AGUILAR *v.* UNITED STATES; and
No. 07–7746. RYAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 956.

No. 07–7114. OUTLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 485 F. 3d 1273.

No. 07–7371. DORSEY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 494 F. 3d 527.

No. 07–7411. HARPER *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 479 Mich. 599, 739 N. W. 2d 523.

No. 07–7594. COOPER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 537.

No. 07–7769. WILLIAMS *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 494 F. 3d 478.

No. 07–7815. SALDANO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 232 S. W. 3d 77.

No. 07–7829. BRADFORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 499 F. 3d 910.

No. 07–7830. JOUBERT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 235 S. W. 3d 729.

No. 07–8274. ROYSTER *v.* ABDELLATIF ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–8275. RUSIECKI *v.* JENSEN. Ct. App. Mich. Certiorari denied.

No. 07–8276. SIDES *v.* CITY OF CHAMPAIGN, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 496 F. 3d 820.

No. 07–8306. RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8342. SMITH *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8344. SCHELL *v.* VASQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8347. ST. LOUIS *v.* MARSHALL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 248 Fed. Appx. 343.

No. 07–8352. WALSH *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. (two judgments). C. A. 2d Cir. Certiorari denied.

No. 07–8355. GENTRAS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–8362. HOLMAN *v.* CASON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8364. LEWIS *v.* DEXTER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8368. GOULD *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 968 So. 2d 578.

No. 07–8372. HYLAND *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8374. HUFF *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8378. FRANCIS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8380. TAYLOR-BEY *v.* BOWEN ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–8393. BOUDETTE *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 07–8396. BRITT *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 967 So. 2d 920.

No. 07–8403. ADAMS *v.* DAVITA DIALYSIS CENTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 871.

No. 07–8419. CLARK *v.* POPE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 524.

No. 07–8427. BEATTY *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8428. AYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–8431. ALDEGUER *v.* OREGON ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8462. STRADER, AKA STRADLER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 593 Pa. 421, 931 A. 2d 630.

No. 07–8495. HERNANDEZ *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8530. NASSAR *v.* MALONEY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 233 Fed. Appx. 15.

No. 07–8543. WILLIAMS *v.* POWELL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 174.

No. 07–8583. DAVIS *v.* MUKASEY, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 07–8624. SMITH *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8635. MCCUISTION *v.* MCKENNA, ATTORNEY GENERAL OF WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8670. CHEATHAM *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–8719. INSYXIENGMAY *v.* BRUNSON, SUPERINTENDENT, CLALLAM BAY CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 693.

No. 07–8721. GAUTIER *v.* RHODE ISLAND ET AL. C. A. 1st Cir. Certiorari denied.

No. 07–8741. CLARK *v.* ADVENTIST HEALTH SYSTEM ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8743. CODY *v.* SLYKHUIS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 160.

No. 07–8775. QAZZA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 419.

No. 07–8784. WHITE *v.* BURTT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 568.

No. 07–8789. SPINNATO *v.* GALLEY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 112.

No. 07–8804. BERKOVITZ *v.* MINNESOTA. C. A. 8th Cir. Certiorari denied. Reported below: 505 F. 3d 827.

No. 07–8811. HAMMOND *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8816. QUINTANILLA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8827. THOMPSON *v.* UTAH DEPARTMENT OF COMMERCE, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING. Ct. App. Utah. Certiorari denied.

No. 07–8867. MEROLA *v.* SHERRER, ADMINISTRATOR, NORTHERN STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 07–8888. RAMSEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 813.

No. 07–8899. KING *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 248 Fed. Appx. 192.

No. 07–8903. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–8905. BARRAZA-SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 230.

No. 07–8930. GREEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–8931. HENDERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 351.

No. 07–8935. GUILLORY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 870.

No. 07–8938. RAMIREZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 390.

No. 07–8939. RUDOLPH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–8945. MURRAY *v.* FRANCIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 569.

No. 07–8952. TORRES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–8953. ROYAL *v.* ROBINSON. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 831.

No. 07–8966. PROCTOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 505 F. 3d 366.

No. 07–8972. SCOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 976.

No. 07–8975. TUCKER, AKA DILL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–8979. NIAVE-DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 972.

No. 07–8980. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 896.

No. 07–8982. BORIHANE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 251 Fed. Appx. 708.

No. 07–8987. HOFFLER-RIDDICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 249.

No. 07–8988. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 897.

No. 07–8991. DUQUE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 256 Fed. Appx. 436.

No. 07–8993. DOMINGO-GODINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 379.

No. 07–8998. REED *v.* OUTLAW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–9000. OWEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 500 F. 3d 83.

No. 07–9001. PRIDDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 939.

No. 07–9003. LAMONDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 249.

No. 07–9004. LISCANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 493 F. 3d 879.

No. 07–9005. TORRES-SUSTAITA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 377.

No. 07–9007. BARTSCH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 252 Fed. Appx. 379.

No. 07–9008. REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 659.

No. 07–9010. SLADE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 946.

No. 07–9013. ROJAS DELAMOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 207.

No. 07–9014. DIKEOCHA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–9018. MCSWAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 574.

No. 07–9019. PICKFORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 252 Fed. Appx. 440.

No. 07–9023. NORWOOD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 623.

No. 07–9026. MENDOZA-NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 380.

No. 07–9027. JUSINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 254 Fed. Appx. 111.

No. 07–9029. LINDBLAD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 647.

No. 07–9032. SEYMOUR *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–9034. ROSE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 251 Fed. Appx. 708.

No. 07–9039. ABBOUCHI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 502 F. 3d 850.

No. 07–9047. ESCOBAR ARIAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9051. GARCIA-CASTANEDA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 966.

No. 07–9053. GUTIERREZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 251 Fed. Appx. 804.

No. 07–9060. COLLINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9062. CHAUX-SARRIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9063. FASHEWE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9073. MATTHEWS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 498 F. 3d 25.

No. 07–9075. FOXWORTH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9080. HENDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 306.

No. 07–9084. HARMON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9087. FIORANI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 818.

No. 07–9090. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–9094. ELSESSER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–9095. DIAZ-LUEVANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 494 F. 3d 1159.

No. 07–9098. CALVILLO-JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 673.

No. 07–9099. NORBURY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 492 F. 3d 1012.

No. 07–9103. MULDROW, AKA COOPER, AKA WASHINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 177.

No. 07–9104. TELLIER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9113. SANCHEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 253 Fed. Appx. 153.

No. 07–9120. MARTINES-CHAVEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–806. PHILIP MORRIS USA INC. ET AL. *v.* ACCORD ET AL. Sup. Ct. App. W. Va. Motions of Ciba Corporation et al. and Chamber of Commerce of the United States of America for leave to file briefs as *amici curiae* granted. Certiorari denied.

No. 07–8273. ROLLE *v.* RAYSOR ET AL. C. A. 11th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 07–549. GANGULY *v.* SWISS AMERICAN SECURITIES, INC., ET AL., *ante*, p. 1099;

No. 07–624. HENDRICKSON *v.* UNITED STATES, *ante*, p. 1101;

No. 07–681. SCHULZ *v.* UNITED STATES ET AL., *ante*, p. 1102;

No. 07–709. LOPEZ *v.* JACKSON, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, *ante*, p. 1102;

No. 07–5710. TURNER *v.* UNITED STATES, *ante*, p. 1103;

No. 07–6855. IN RE MILLER, *ante*, p. 1060;

No. 07–6920. GRANDOIT *v.* COOPERATIVE FOR HUMAN SERVICES, *ante*, p. 1145;

No. 07–7255. WILLIAMS *v.* POWELL, WARDEN, *ante*, p. 1112;

No. 07–7391. MARLIN *v.* FONTENOT, *ante*, p. 1116;

No. 07–7438. JACKMAN *v.* FEDERAL BUREAU OF INVESTIGATION, *ante*, p. 1117;

No. 07–7535. SHELTON *v.* MERIT SYSTEMS PROTECTION BOARD, *ante*, p. 1119;

No. 07–7660. WARD *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *ante*, p. 1122;

No. 07–8097. HINSON *v.* UNITED STATES, *ante*, p. 1156; and

No. 07–8390. IN RE MARMOLEJOS, *ante*, p. 1139. Petitions for rehearing denied.

No. 04–961. MCMILLAN *v.* UNITED STATES, 543 U. S. 1153. Motion for leave to file petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this motion.

FEBRUARY 29, 2008

Miscellaneous Order

No. 07–953. CITIZENS UNITED *v.* FEDERAL ELECTION COMMISSION. C. A. D. C. Cir. Parties are directed to submit briefing addressing the question whether this Court has jurisdiction to hear the appeal in light of the language in 28 U. S. C. § 1253 permitting a direct appeal "in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." Briefs, not to exceed 3,000 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Monday, March 10, 2008. Reply briefs, if any, not to exceed 2,000 words, may be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Thursday, March 13, 2008.

MARCH 3, 2008

Certiorari Granted—Vacated and Remanded

No. 07–836. ESPINOLA *v.* UNITED STATES. C. A. 1st Cir. Certiorari granted, judgment vacated, and case remanded for fur-

ther consideration in light of *Gall* v. *United States*, *ante*, p. 38. Reported below: 242 Fed. Appx. 709.

No. 07–8023. PRUETT *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Watson* v. *United States*, *ante*, p. 74. Reported below: 501 F. 3d 976.

Miscellaneous Orders

No. 07A612 (07–9171). SIBLEY *v.* FLORIDA SUPREME COURT ET AL. C. A. 11th Cir. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 07M48. PLAZA *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY;

No. 07M49. FLORES *v.* HERNANDEZ, WARDEN;

No. 07M50. PARIS *v.* UNITED STATES; and

No. 07M51. MERRIMAN *v.* POTTER, POSTMASTER GENERAL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06–1204. REPUBLIC OF THE PHILIPPINES ET AL. *v.* PIMENTEL ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1061.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–77. RILEY, GOVERNOR OF ALABAMA *v.* KENNEDY ET AL. D. C. M. D. Ala. [Probable jurisdiction postponed, *ante*, p. 1035.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Florida et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 07–440. ROTHGERY *v.* GILLESPIE COUNTY, TEXAS. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1061.] Motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 07–841. AMSCHWAND, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF AMSCHWAND *v.* SPHERION CORP. ET AL. C. A. 5th Cir.; and

No. 07–8521. HARBISON *v.* BELL, WARDEN. C. A. 6th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 07–9210. IN RE SESARIO DEPINEDA; and

No. 07–9330. IN RE MERRIWEATHER. Petitions for writs of habeas corpus denied.

No. 07–9211. IN RE ASHANTI. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. JUSTICE BREYER took no part in the consideration or decision of this motion and this petition.

No. 07–9228. IN RE TURNER. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 07–845. IN RE RAISER; and

No. 07–8560. IN RE LEFORT. Petitions for writs of mandamus denied.

Certiorari Denied

No. 07–494. RIGAS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 490 F. 3d 208.

No. 07–548. BEASLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 495 F. 3d 142.

No. 07–563. PETRO-HUNT, L. L. C., ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–586. CUILLO ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 492 F. 3d 806.

No. 07–719. TALK AMERICA, INC. *v.* DOUGLAS. C. A. 9th Cir. Certiorari denied. Reported below: 495 F. 3d 1062.

No. 07–721. AMERICAN TELECOM CO., L. L. C., ET AL. *v.* REPUBLIC OF LEBANON. C. A. 6th Cir. Certiorari denied. Reported below: 501 F. 3d 534.

No. 07–722. NURRIDDIN *v.* GRIFFIN, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. C. A. D. C. Cir. Certiorari denied. Reported below: 222 Fed. Appx. 5.

No. 07–741. TURNER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 501 F. 3d 59.

No. 07–750. CONEXANT SYSTEMS, INC., ET AL. *v.* GRADEN. C. A. 3d Cir. Certiorari denied. Reported below: 496 F. 3d 291.

No. 07–840. BAUHAUS USA, INC. *v.* COPELAND, NATURAL GUARDIAN AND NEXT FRIEND OF R. D. H., ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 965 So. 2d 662.

No. 07–855. VSF COALITION, INC. *v.* SCOPPETTA ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 9 N. Y. 3d 918, 875 N. E. 2d 891.

No. 07–872. CSX TRANSPORTATION, INC. *v.* UNITED TRANSPORTATION UNION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 562.

No. 07–881. MELTON, FKA FREDMAN *v.* FREDMAN. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 960 So. 2d 52.

No. 07–894. HOYLE *v.* DISTRICT COURT OF IDAHO, ADA COUNTY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 501 F. 3d 1053.

No. 07–903. DUNLEAVY *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 251 Fed. Appx. 80.

No. 07–913. KIDD ET AL. *v.* DOE. C. A. 4th Cir. Certiorari denied. Reported below: 501 F. 3d 348.

No. 07–915. ZAPATA *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 502 F. 3d 192.

No. 07–927. REIDY ET UX. *v.* WHITEHART ASSN., INC. Ct. App. N. C. Certiorari denied. Reported below: 185 N. C. App. 76, 648 S. E. 2d 265.

No. 07–936. MITSUBISHI MATERIALS SILICON CORP. ET AL. *v.* MEMC ELECTRONIC MATERIALS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 248 Fed. Appx. 199.

No. 07–999. PERKINS *v.* UNITED STATES EX REL. WYNNE, SECRETARY OF THE AIR FORCE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 771.

No. 07–7287. KNESE *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 07–7440. MOLINA-GONZALEZ, AKA MARTINES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 319.

No. 07–7572. ROJAS ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 451 F. 3d 320.

No. 07–8421. JOHNSON *v.* PHELPS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8424. LITMON *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–8433. LEMUS *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8439. PERALTA *v.* GARZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8450. GETSY *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 495 F. 3d 295.

No. 07–8453. WEST *v.* MUNICIPAL COURT FOR THE CITY OF O'FALLON, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 07–8464. MARTINEZ SOSA *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8470. ALANA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–8472. BLANKENSHIP *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 07–8473. BALLENGER *v.* NORTON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 974.

No. 07–8476. SHOCKLEY *v.* PHELPS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8481. ANDERSON *v.* DONALD, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 254.

No. 07–8483. DEL ROSIO ALFARO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 1277, 163 P. 3d 118.

No. 07–8485. TERRY *v.* GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 07–8487. TURNER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–8488. UPSHAW *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8491. GAUTT *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 313.

No. 07–8493. HENRY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–8497. FERKO *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 07–8498. MOODY *v.* MARYLAND DEPARTMENT OF LABOR, LICENSING AND REGULATION, ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 175 Md. App. 767, 775.

No. 07–8503. TRIPLETT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 373 Ill. App. 3d 1154, 943 N. E. 2d 334.

No. 07–8506. WASHINGTON *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8508. TRAVILLION *v.* ARAMARK CORP. C. A. 3d Cir. Certiorari denied. Reported below: 248 Fed. Appx. 335.

No. 07–8509. ZAMBRANO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 1082, 163 P. 3d 4.

No. 07–8510. DEL TORO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 498 F. 3d 486.

No. 07–8513. MENDEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8514. MILNER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8516. HIGHTOWER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION (two judgments). C. A. 5th Cir. Certiorari denied.

No. 07–8519. HARBISON *v.* BELL, WARDEN; and
No. 07–8520. HARBISON *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 503 F. 3d 566.

No. 07–8523. LEWIS *v.* HARDY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 589.

No. 07–8525. MINNITI *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 373 Ill. App. 3d 55, 867 N. E. 2d 1237.

No. 07–8527. ROBBINS *v.* UPTON, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 07–8542. TAVARES *v.* TAVARES ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. Reported below: 151 Cal. App. 4th 620, 60 Cal. Rptr. 3d 39.

No. 07–8546. MCFERREN *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8547. MOORE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–8552. DOUGLAS *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 07–8554. DIAZ *v.* GREEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 204.

No. 07–8555. LOLLAR *v.* DTR TENNESSEE, INC. C. A. 6th Cir. Certiorari denied.

No. 07–8563. ADONAI-ADONI *v.* MCVEY, CHAIRWOMAN, PENNSYLVANIA BOARD OF PROBATION AND PAROLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8565. ANDERSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–8572. BUTLER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–8574. WALLACE *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 961 So. 2d 954.

No. 07–8575. WARMSLEY *v.* TEXAS BOARD OF PARDONS AND PAROLES. C. A. 5th Cir. Certiorari denied.

No. 07–8580. CODY *v.* CBM CORRECTIONAL FOOD SERVICES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 763.

No. 07–8588. TALON *v.* NATIONAL TRANSPORTATION SAFETY BOARD ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–8615. SEELY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 07–8618. COCHRUN *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 740 N. W. 2d 887.

No. 07–8627. SMITH *v.* INDIANA DEPARTMENT OF CORRECTION ET AL. Ct. App. Ind. Certiorari denied. Reported below: 871 N. E. 2d 975.

No. 07–8637. MARKS *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 268 Fed. Appx. 913.

No. 07–8649. RACKLEY *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8651. MURPHY *v.* MISSOURI DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 506 F. 3d 1111.

No. 07–8661. BRAXTON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8664. PERRY *v.* OHIO. Ct. App. Ohio, Trumbull County. Certiorari denied.

No. 07–8696. CHERRY *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8723. NEWLAND *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–8730. FROEMEL *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–8749. ROLON *v.* SPENCER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied.

No. 07–8750. RAMIREZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8754. BURROW *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 245 Fed. Appx. 972.

No. 07–8777. SAUNDERS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 373 Ill. App. 3d 1153, 943 N. E. 2d 333.

No. 07–8792. SMITH *v.* WOODS. C. A. 2d Cir. Certiorari denied. Reported below: 219 Fed. Appx. 110.

No. 07–8832. LAWRENCE ET AL. *v.* MCCALL, JUDGE, DISTRICT COURT OF OKLAHOMA, FIFTH JUDICIAL DISTRICT, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 393.

No. 07–8836. BALLON *v.* WOOD, CORRECTIONAL ADMINISTRATOR, SCOTLAND CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 762.

No. 07–8837. COREY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8860. NASSER *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 766.

No. 07–8865. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8875. SCOTT *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8893. ALEXANDER *v.* LUCAS, JUDGE, DISTRICT COURT OF OKLAHOMA, 21ST JUDICIAL DISTRICT, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 145.

No. 07–8908. ANDERSON *v.* ALASKA. Ct. App. Alaska. Certiorari denied. Reported below: 163 P. 3d 1000.

No. 07–8969. BINGMAN *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 221 W. Va. 289, 654 S. E. 2d 611.

No. 07–8986. JACKSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 163 P. 3d 596.

No. 07–9030. ANOU LO *v.* ENDICOTT, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 506 F. 3d 572.

No. 07–9055. MCGEE *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–9057. PALM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–9131. IGLESIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9134. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 316.

No. 07–9148. NASH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 855.

No. 07–9149. HOGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 889.

No. 07–9152. WHITMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–9155. GAITAN-TOVALLES, AKA GAITAN *v.* UNITED STATES (Reported below: 253 Fed. Appx. 428); LUEVANOS-OVIEDO *v.* UNITED STATES (253 Fed. Appx. 457); OJEDA-GONZALEZ, AKA

REYNOSOS-GONZALEZ, AKA DOMINGUEZ-ARIAS *v.* UNITED STATES (253 Fed. Appx. 441); RODRIGUEZ-SALGADO, AKA RAMIREZ-RAMIREZ, AKA BURCIAGA *v.* UNITED STATES (253 Fed. Appx. 426); and ROJAS-LOPEZ *v.* UNITED STATES (253 Fed. Appx. 429). C. A. 5th Cir. Certiorari denied.

No. 07–9158. FAGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9162. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 256 Fed. Appx. 497.

No. 07–9163. DAUGHTIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 285.

No. 07–9165. CAPULIN-DE LA CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 801.

No. 07–9170. QUINTANILLA-GARAY *v.* UNITED STATES (Reported below: 254 Fed. Appx. 425); GONZALEZ-TORRES *v.* UNITED STATES (253 Fed. Appx. 415); GUZMAN-GARCIA *v.* UNITED STATES (253 Fed. Appx. 416); PENALOZA *v.* UNITED STATES (253 Fed. Appx. 417); LOPEZ-GOMEZ, AKA BESA, AKA GONZALEZ BESA, AKA LOPEZ *v.* UNITED STATES (253 Fed. Appx. 438); RODRIGUEZ-VALDEZ *v.* UNITED STATES (256 Fed. Appx. 745); FLORES-SALAZAR *v.* UNITED STATES (255 Fed. Appx. 924); CANA-PEREZ *v.* UNITED STATES (256 Fed. Appx. 723); GUTIERREZ-BARRAGAN, AKA GUTIERREZ, AKA BARRAGAN, AKA CAMPILLO *v.* UNITED STATES (255 Fed. Appx. 923); CERVIN-ORTIZ, AKA AGUIRRE-ROJAS *v.* UNITED STATES (256 Fed. Appx. 724); ZUNIGA-PEREZ *v.* UNITED STATES (256 Fed. Appx. 725); GUTIERREZ-SALINAS *v.* UNITED STATES (257 Fed. Appx. 804); LUMBRERAS-AMARO, AKA AMARO-LUMBRERAS, AKA LUMBRERAS *v.* UNITED STATES (257 Fed. Appx. 824); HERNANDEZ-PEREZ, AKA GARCIA-MIRANDA *v.* UNITED STATES (256 Fed. Appx. 721); LOPEZ-SEVILLA, AKA LOPEZ, AKA LOPEZ SEVILLE, AKA ROBLES *v.* UNITED STATES (256 Fed. Appx. 735); VALDEZ-SERRATO *v.* UNITED STATES (257 Fed. Appx. 829); ESPARZA-GONZALEZ *v.* UNITED STATES (260 Fed. Appx. 740); RODRIGUEZ-ESPINOZA, AKA RODRIGUEZ-ESPINOSA *v.* UNITED STATES (255 Fed. Appx. 923); DEL ANGEL *v.* UNITED STATES (256 Fed. Appx. 721); LOPEZ-SALAS *v.* UNITED STATES (513 F. 3d 174); PIMENTEL-HERNANDEZ *v.* UNITED STATES (256 Fed. Appx. 722); NUFIO-PEREZ, AKA NUFIO *v.* UNITED STATES

(256 Fed. Appx. 724); RIVERA-MENDEZ *v.* UNITED STATES (258 Fed. Appx. 667); and RAYGOZA-CEDILLO *v.* UNITED STATES (260 Fed. Appx. 745). C. A. 5th Cir. Certiorari denied.

No. 07–9178. VIERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 356.

No. 07–9183. ADEYI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9185. MARIN-PALAFOX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 116.

No. 07–9189. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9191. NELSON, AKA ANDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 345.

No. 07–9203. MALDONADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 253 Fed. Appx. 150.

No. 07–635. PETERS *v.* VILLAGE OF CLIFTON, ILLINOIS, ET AL. C. A. 7th Cir. Motions of Joyce Yamagiwa, American Farm Bureau Federation, Coalition for Property Rights, and Elizabeth J. Neumont et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 498 F. 3d 727.

No. 07–843. DRAIN ET UX. *v.* ACCREDITED HOME LENDERS, INC., ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 219 Fed. Appx. 791.

Rehearing Denied

No. 06–7591. LEE *v.* UNITED STATES, *ante*, p. 1090;

No. 07–14. WADE *v.* UNITED STATES, *ante*, p. 1009;

No. 07–604. GARCIA ET AL. *v.* CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION ET AL., *ante*, p. 1142;

No. 07–694. GUTHRIE *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 1143;

No. 07–5582. SPENCER *v.* UNITED STATES, *ante*, p. 1063;

No. 07–6733. STOYER *v.* COMMUNITY HOUSING NETWORK, INC., ET AL., *ante*, p. 1047;

No. 07–6776. WILLIAMS *v.* UNITED STATES, *ante*, p. 1105;

No. 07–6937. STEELE *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1078;

No. 07–7012. BOONE *v.* TEXAS, *ante*, p. 1106;

No. 07–7143. HORICIANU *v.* UNITED STATES, *ante*, p. 1050;

No. 07–7147. HOLMES *v.* GENERAL ELECTRIC CO., *ante*, p. 1109;

No. 07–7281. SHEARING *v.* GONZALEZ, *ante*, p. 1113;

No. 07–7301. SPUCK *v.* STOWITZKY, SUPERINTENDENT, STATE REGIONAL CORRECTIONAL FACILITY AT MERCER, *ante*, p. 1113;

No. 07–7384. IN RE SHISINDAY, *ante*, p. 1094;

No. 07–7475. AKINRO *v.* BLAKE, *ante*, p. 1147;

No. 07–7600. CARTWRIGHT *v.* UNITED STATES, *ante*, p. 1083;

No. 07–7785. BRUNO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1169;

No. 07–7804. BUCKLON *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1125;

No. 07–7851. ANDERSON *v.* UNITED STATES, *ante*, p. 1127;

No. 07–7917. ZAMBRANA *v.* UNITED STATES, *ante*, p. 1128; and

No. 07–8161. LOPEZ *v.* UNITED STATES, *ante*, p. 1157. Petitions for rehearing denied.

No. 06–11252. KRUEGER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 840. Motion for leave to file petition for rehearing denied.

MARCH 5, 2008

Dismissals Under Rule 46

No. 07–846. REDDING *v.* SAFFORD UNIFIED SCHOOL DISTRICT #1 ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.

No. 07–8602. CHAMBERS *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46.

MARCH 14, 2008

Miscellaneous Orders

No. 06–1204. REPUBLIC OF THE PHILIPPINES ET AL. *v.* PIMENTEL ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1061.]

Motion of Merrill Lynch, Pierce, Fenner & Smith Inc. for leave to participate in oral argument as *amicus curiae* and for divided argument denied. Motion of Jerry S. Pimentel, temporary administrator of the estate of Mariano J. Pimentel, to be substituted in place of Mariano J. Pimentel, deceased, granted.

No. 07–208. INDIANA *v.* EDWARDS. Sup. Ct. Ind. [Certiorari granted, *ante*, p. 1074.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

MARCH 17, 2008

Certiorari Granted—Vacated and Remanded

No. 07–7723. HOLTZ *v.* UNITED STATES. C. A. 10th Cir. Reported below: 226 Fed. Appx. 854;

No. 07–7948. RODRIGUEZ-FLORES *v.* UNITED STATES. C. A. 5th Cir. Reported below: 236 Fed. Appx. 138; and

No. 07–9033. SOPERLA *v.* UNITED STATES. C. A. 8th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Gall* v. *United States*, *ante*, p. 38.

No. 07–9207. MELVIN *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kimbrough* v. *United States*, *ante*, p. 85. Reported below: 252 Fed. Appx. 381.

Certiorari Dismissed

No. 07–8753. AWALA *v.* FLORIDA DEPARTMENT OF HEALTH. Dist. Ct. App. Fla., 3d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 949 So. 2d 210.

No. 07–8959. AWALA *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–9061. CUESTA *v.* POLLARD, WARDEN. Ct. App. Wis. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–9389. ADAMS *v.* DAVIS, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 07M52. WAGSTAFF *v.* DEPARTMENT OF EDUCATION. Motion for leave to proceed *in forma pauperis* with the declaration of indigency under seal denied.

No. 07M53. SIMPSON, WARDEN *v.* BOWLING; and
No. 07M55. AQUINO *v.* FIRST NATIONWIDE MORTGAGE CORP. ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 07M54. IN RE RIEDL. Motion for leave to file petition for writ of error *coram nobis* denied.

No. 138, Orig. SOUTH CAROLINA *v.* NORTH CAROLINA. Motion of city of Charlotte, North Carolina, for leave to intervene referred to the Special Master. [For earlier order herein, see, *e. g.*, *ante*, p. 1160.]

No. 06–1039. ESTATE OF ROXAS ET AL. *v.* PIMENTEL ET AL. C. A. 9th Cir. Motion of Jerry S. Pimentel, temporary administrator of the estate of Mariano J. Pimentel, to be substituted in place of Mariano J. Pimentel, deceased, granted.

No. 06–1195. BOUMEDIENE ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL.; and
No. 06–1196. AL ODAH, NEXT FRIEND OF AL ODAH, ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. [Certiorari granted, 551 U. S. 1160.] Motions of petitioners for leave to file supplemental briefs after argument granted.

No. 06–7517. IRIZARRY *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1086.] Motion of petitioner for leave to file volume 3 of the Joint Appendix under seal granted.

No. 07–290. DISTRICT OF COLUMBIA ET AL. *v.* HELLER. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1035.] Motion of Wisconsin for leave to file a brief as *amicus curiae* out of time granted.

No. 07–330. GREENLAW *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1087.] Motion of the Solicitor General for divided argument granted.

No. 07–7750. CENSKE *v.* SCHARTIER ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1163] denied.

No. 07–7751. CENSKE *v.* LAVEY ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1164] denied.

No. 07–8171. UNDERHILL *v.* LONG BEACH MEMORIAL MEDICAL CENTER. Ct. App. Cal., 2d App. Dist.; and

No. 07–9171. SIBLEY *v.* SUPREME COURT OF FLORIDA ET AL. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until April 7, 2008, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 07–9378. IN RE MOORE;
No. 07–9420. IN RE TAYLOR;
No. 07–9433. IN RE MARDIS;
No. 07–9442. IN RE BERRY;
No. 07–9469. IN RE DELAY;
No. 07–9484. IN RE WEATHERSPOON; and
No. 07–9492. IN RE FUSON. Petitions for writs of habeas corpus denied.

No. 07–9453. IN RE TWITTY. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 07–8613. IN RE STOLLER;
No. 07–8699. IN RE RIVERA; and
No. 07–9212. IN RE MARINES. Petitions for writs of mandamus denied.

No. 07–884. IN RE SIEVERDING ET UX. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 07–499. NEGUSIE *v.* MUKASEY, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari granted. Reported below: 231 Fed. Appx. 325.

No. 07–582. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* FOX TELEVISION STATIONS, INC., ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 489 F. 3d 444.

No. 07–773. VADEN *v.* DISCOVER BANK ET AL. C. A. 4th Cir. Certiorari granted. Reported below: 489 F. 3d 594.

No. 07–591. MELENDEZ-DIAZ *v.* MASSACHUSETTS. App. Ct. Mass. Motions of Richard D. Friedman and Pamela R. Metzger et al. for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 69 Mass. App. 1114, 870 N. E. 2d 676.

No. 07–689. BARTLETT, EXECUTIVE DIRECTOR OF NORTH CAROLINA STATE BOARD OF ELECTIONS, ET AL. *v.* STRICKLAND ET AL. Sup. Ct. N. C. Motions of Honorable Vernon Sykes et al., NAACP et al., and League of Women Voters for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 361 N. C. 491, 649 S. E. 2d 364.

No. 07–772. WADDINGTON, SUPERINTENDENT, WASHINGTON CORRECTIONS CENTER *v.* SARAUSAD. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 479 F. 3d 671.

No. 07–901. OREGON *v.* ICE. Sup. Ct. Ore. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Whether the Sixth Amendment, as construed in *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), and *Blakely* v. *Washington*, 542 U. S. 296 (2004), requires that facts (other than prior convictions) necessary to imposing consecutive sentences be found by the jury or admitted by the defendant." Reported below: 343 Ore. 248, 170 P. 3d 1049.

No. 07–6984. JIMENEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition.

Certiorari Denied

No. 07–487. HENRY *v.* BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT. C. A. 3d Cir. Certiorari denied. Reported below: 493 F. 3d 303.

No. 07–506. GIBSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 490 F. 3d 604.

No. 07–607. AGUAYO *v.* GEREN, SECRETARY OF THE ARMY. C. A. D. C. Cir. Certiorari denied. Reported below: 476 F. 3d 971.

No. 07–633. VENETIAN CASINO RESORT, LLC *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 484 F. 3d 601.

No. 07–716. WFMJ TELEVISION, INC. *v.* BOSLEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 445.

No. 07–734. ILLINOIS BELL TELEPHONE CO. *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 21. C. A. 7th Cir. Certiorari denied. Reported below: 491 F. 3d 685.

No. 07–740. DANIELS ET AL. *v.* PHILIP MORRIS USA INC. ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 1257, 163 P. 3d 106.

No. 07–748. PUERTO RICAN ASSOCIATION OF BEER IMPORTERS, INC., ET AL. *v.* COMMONWEALTH OF PUERTO RICO ET AL. Sup. Ct. P. R. Certiorari denied.

No. 07–749. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 490 F. 3d 1282.

No. 07–763. GRAHAM *v.* HARTFORD LIFE & ACCIDENT INSURANCE CO. C. A. 10th Cir. Certiorari denied. Reported below: 501 F. 3d 1153.

No. 07–767. ALJIAN ET AL. *v.* JOHNSON. C. A. 9th Cir. Certiorari denied. Reported below: 490 F. 3d 778.

No. 07–799. CAPTAIN D'S, LLC *v.* SMITH. Sup. Ct. Miss. Certiorari denied. Reported below: 963 So. 2d 1116.

No. 07–864. SPIEGEL *v.* ROWLAND. Ct. App. N. Y. Certiorari denied. Reported below: 9 N. Y. 3d 836, 872 N. E. 2d 1194.

No. 07–870. WHITESIDE *v.* CARR, HUNT & JOY, LLP, ET AL. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 07–876. CORRIGAN *v.* UNKNOWN KING COUNTY DEPUTY #1 ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 472.

No. 07–877. WIDTFELDT *v.* TAX EQUALIZATION AND REVIEW COMMISSION ET AL. Ct. App. Neb. Certiorari denied. Reported below: 15 Neb. App. 410, 728 N. W. 2d 295.

No. 07–878. ZINCHENKO *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–887. NORRIS *v.* ENGLES. C. A. 8th Cir. Certiorari denied. Reported below: 494 F. 3d 634.

No. 07–888. PHARMASTEM THERAPEUTICS, INC. *v.* VIACELL, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 491 F. 3d 1342.

No. 07–900. GLACIER DEVELOPMENT CO., L. L. C., ET AL. *v.* MILLER, SECRETARY OF TRANSPORTATION OF KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 284 Kan. 476, 161 P. 3d 730.

No. 07–902. MICHAEL *v.* CATERPILLAR FINANCIAL SERVICES CORP. C. A. 6th Cir. Certiorari denied. Reported below: 496 F. 3d 584.

No. 07–907. JOHNSON *v.* GADSON ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 252 Fed. Appx. 321.

No. 07–911. BISHOP *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 07–914. ICE EMBASSY, INC., ET AL. *v.* CITY OF HOUSTON, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 236 Fed. Appx. 118.

No. 07–916. BRACE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 250 Fed. Appx. 359.

No. 07–917. CARVEL, EXECUTOR OF THE ESTATE OF CARVEL *v.* CARVEL FOUNDATION INC. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 230 Fed. Appx. 103.

No. 07–918. HUSAIN ET AL. *v.* SPRINGER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 494 F. 3d 108.

No. 07–922. JOHNSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 07–926. ROMAN *v.* ROMAN. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 193 S. W. 3d 40.

No. 07–930. KALUOM *v.* STOLT OFFSHORE INC. C. A. 5th Cir. Certiorari denied. Reported below: 504 F. 3d 511.

No. 07–932. UNTRACHT *v.* FIKRI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 249 Fed. Appx. 268.

No. 07–934. CADLE CO. *v.* PRATT. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 248 and 249.

No. 07–938. NEW YORK MERCANTILE EXCHANGE, INC. *v.* INTERCONTINENTALEXCHANGE, INC. C. A. 2d Cir. Certiorari denied. Reported below: 497 F. 3d 109.

No. 07–942. MAMO ET AL. *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 934 A. 2d 376.

No. 07–945. SAREEN *v.* SAREEN. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 153 Cal. App. 4th 371, 62 Cal. Rptr. 3d 687.

No. 07–966. OVERVIEW BOOKS, LLC, ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 232 Fed. Appx. 989.

No. 07–973. PARKER *v.* CUMMING ET AL. Ct. App. Tex., 11th Dist. Certiorari denied. Reported below: 216 S. W. 3d 905.

No. 07–978. BARNABY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 363 Ill. App. 3d 1192, 917 N. E. 2d 634.

No. 07–979. HOUSTON *v.* AAMES FUNDING CORP., DBA AAMES HOME LOAN, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 240 Fed. Appx. 910.

No. 07–992. CAMPBELL *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied.

No. 07–993. HEFFINGTON, INDIVIDUALLY AND ON BEHALF OF FARR, DECEASED *v.* DEPARTMENT OF DEFENSE. C. A. 10th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 952.

No. 07–1001. VELLON *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–1009. LESSNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 498 F. 3d 185.

No. 07–1013. OLIVAS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–1030. HACKER *v.* MCBRIDE, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 07–1031. ROMMY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 506 F. 3d 108.

No. 07–1044. DESTIN ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 809.

No. 07–1058. CONNOLLY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 504 F. 3d 206.

No. 07–7066. BARRETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 496 F. 3d 1079.

No. 07–7082. OBOT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 663.

No. 07–7335. COMBS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 483.

No. 07–7481. LARSON ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 495 F. 3d 1094.

No. 07–7688. MURRAY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 51.

No. 07–7807. MARTINEZ-AVINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 688 and 246 Fed. Appx. 420.

No. 07–7822. FORTNER ET AL. *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 07–7856. KENNEDY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 499 F. 3d 547.

No. 07–7988. VALDEZ LEAL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 235 Fed. Appx. 937.

No. 07–7996. BAMBERG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 478 F. 3d 934.

No. 07–8034. ZACKERY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 494 F. 3d 644.

No. 07–8167. BOLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 842.

No. 07–8168. BARNWELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 41 Cal. 4th 1038, 162 P. 3d 596.

No. 07–8184. WHEELER *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8193. DURR *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 3d 423.

No. 07–8203. PEREZ NERI *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 210 Ore. App. 368, 150 P. 3d 1115.

No. 07–8209. ALAMILLA-MARVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 214.

No. 07–8557. MITCHELL *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8577. PEYRAVI *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8579. DROPALSKI *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 07–8581. CHAPMAN *v.* FRIED ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–8584. DANIELS *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 501 F. 3d 735.

No. 07–8586. NALI *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 07–8589. THOMAS *v.* AWI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 508 F. 3d 1225.

No. 07–8590. TABATABAEE *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8591. TAYLOR *v.* HEDGEPETH, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 555.

No. 07–8592. TABATABAEE *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 07–8593. THOMAS *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 974.

No. 07–8594. RODRIGUEZ *v.* MILLER, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 499 F. 3d 136.

No. 07–8598. SPUCK *v.* STOWITZKY, SUPERINTENDENT, STATE REGIONAL CORRECTIONAL FACILITY AT MERCER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8604. WALKER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–8609. THOMAS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 989.

No. 07–8612. SELLERS *v.* DANIELS, GOVERNOR OF INDIANA, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 363.

No. 07–8614. RAMIREZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8616. PRATHER *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 238 S. W. 3d 399.

No. 07–8619. CLARKE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–8625. SPENCER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 224 Fed. Appx. 298.

No. 07–8639. JOHNSON *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8643. WILLIAMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–8645. JONES *v.* HOOD ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–8646. MURPHY *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 703.

No. 07–8648. REID *v.* JOHNSON ET AL. Sup. Ct. Va. Certiorari denied.

No. 07–8653. RENNEKE *v.* NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES. Sup. Ct. Neb. Certiorari denied.

No. 07–8655. ROUNDTREE *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8656. K. A. *v.* SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–8665. OCHOA CANALES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8668. DESMOND *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 937 A. 2d 139.

No. 07–8669. ELY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–8671. DELEON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–8675. ADAMS *v.* STUBBS ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–8676. ADAMS *v.* GALLOWAY ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–8677. BOOMERSHINE *v.* OKLAHOMA. C. A. 10th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 544.

No. 07–8681. JOHNSON *v.* ANNETTS, SUPERINTENDENT, DOWNSTATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–8685. ADAMS *v.* OHIO. Ct. App. Ohio, Lake County. Certiorari denied.

No. 07–8687. ALLEN *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 713.

No. 07–8688. BARNES *v.* HENDERSON ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–8689. BARNETT *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8690. MCCAIN *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8692. COLE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 9 So. 3d 581.

No. 07–8697. CROSBY *v.* TILTON, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 816.

No. 07–8700. SAMUEL *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 279.

No. 07–8703. HARRIS *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 319.

No. 07–8706. JOHNSON *v.* KEEBLER-SUNSHINE BISCUITS, INC., AKA KEEBLER CO. C. A. 3d Cir. Certiorari denied. Reported below: 214 Fed. Appx. 239.

No. 07–8710. RODRIGUEZ *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied.

No. 07–8711. SMITH *v.* HOBBS ET AL. C. A. 8th Cir. Certiorari denied.

No. 07–8713. ROBINSON *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–8716. TEMPLETON *v.* POPE ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8725. GILLIAM *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 480 F. 3d 1027.

No. 07–8729. FILCHOCK *v.* OHIO. Ct. App. Ohio, Lake County. Certiorari denied.

No. 07–8731. HOUGHTON *v.* HALL, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 07–8733. GAINES *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 700.

No. 07–8740. DE JESUS ESTACIO *v.* COURT OF APPEALS OF OREGON ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8742. CAGE-BARILE *v.* CHURCH OF CHRIST IN HOLLYWOOD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8744. DOUGLAS *v.* BLACKETTER, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 07–8745. SMART *v.* TOWNSHIP OF GLOUCESTER, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 229 Fed. Appx. 87.

No. 07–8747. WILLACY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 967 So. 2d 131.

No. 07–8748. CARTER *v.* KELCHNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL. C. A. 3d Cir. Certiorari denied.

No. 07–8756. KNIGHT *v.* EDWARDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 253.

No. 07–8764. COVINGTON *v.* MITSUBISHI MOTOR MANUFACTURING OF AMERICA, INC., ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–8772. ALLEN *v.* ALLEN. Ct. App. D. C. Certiorari denied.

No. 07–8773. BRAMSON *v.* SULAYMAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 251 Fed. Appx. 84.

No. 07–8776. RIDDICK *v.* MODENY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 250 Fed. Appx. 482.

No. 07–8779. SMILEY *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8781. STRICKLAND *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 07–8783. JOHN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 963 So. 2d 716.

No. 07–8808. CORNETT *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8809. DICKERSON *v.* DONALD ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8815. DARLINGTON *v.* DARLINGTON. Super. Ct. Pa. Certiorari denied.

No. 07–8817. LARNER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–8820. ARLINE *v.* KELLY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 126.

No. 07–8821. ANDERSON *v.* PARKER, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 07–8822. AMADI *v.* FEDERAL CORRECTIONAL INSTITUTIONS FORT DIX HEALTH SERVICES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 256 Fed. Appx. 477.

No. 07–8824. ADONAI-ADONI *v.* DEFINO ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8828. THORPE *v.* ERWIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8829. SARAUSAD *v.* WADDINGTON, SUPERINTENDENT, WASHINGTON CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 479 F. 3d 671.

No. 07–8831. WITHEROW *v.* NEVADA BOARD OF PAROLE COMMISSIONERS ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 123 Nev. 305, 167 P. 3d 408.

No. 07–8835. BERAS *v.* ROSS. C. A. 2d Cir. Certiorari denied.

No. 07–8838. MORROW *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–8839. TAEK SANG YOON *v.* LOPEZ ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8851. SAUNDERS *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–8853. ST. LOUIS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 935 A. 2d 256.

No. 07–8877. SAGET *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 915 A. 2d 149.

No. 07–8885. NORRIS *v.* BROOKS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION. C. A. 3d Cir. Certiorari denied.

No. 07–8901. LACY *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8906. ABDALA *v.* BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 3d 1061.

No. 07–8914. TEMPLE *v.* DANN, ATTORNEY GENERAL OF OHIO, ET AL. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 244 Fed. Appx. 23.

No. 07–8920. DREW *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8932. GAESS *v.* SCHOMIG. C. A. 9th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 170.

No. 07–8934. FORBES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 258 Fed. Appx. 417.

No. 07–8941. SPEARS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 550.

No. 07–8948. SOPHEAP CHHEANG *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–8955. SANDERS *v.* LANCASTER. Ct. App. S. C. Certiorari denied.

No. 07–8958. SUEING *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–8962. HIRSCHFIELD *v.* SUPERIOR COURT OF CALIFORNIA, SACRAMENTO COUNTY, ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–8970. BIRD *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–8983. BENNETT *v.* CUOMO, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–8984. BUNTING *v.* BOBBY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8992. DONATO *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–9012. OSWALD *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 07–9015. GIBBS *v.* PHELPS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–9036. SADLER *v.* TILLEY. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 819.

No. 07–9045. BATTLE *v.* HALL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 353.

No. 07–9050. GLOVER *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–9058. FAUCONIER *v.* SONDERVAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 299.

No. 07–9074. KOLAR *v.* MUKASEY, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 07–9076. HANDY *v.* LAMPERT, DIRECTOR, WYOMING DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Wyo. Certiorari denied.

No. 07–9078. GORE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–9083. FINFROCK *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 07–9091. FOUSHEE *v.* WIGGINS ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–9097. EIZEMBER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 164 P. 3d 208.

No. 07–9106. ALEXANDRE *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 927 A. 2d 1155.

No. 07–9111. COOPER *v.* WEST VIRGINIA. Cir. Ct. Cabell County, W. Va. Certiorari denied.

No. 07–9118. WALLENSTEIN, AKA FLETCHER *v.* SUPREME COURT OF PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 07–9140. DIGIANNI *v.* NATIONAL EVALUATION SYSTEMS, INC. C. A. 2d Cir. Certiorari denied.

No. 07–9142. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 503 F. 3d 522.

No. 07–9144. STIGLER *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 07–9151. FORBES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 253 Fed. Appx. 50.

No. 07–9154. HATCHER *v.* MCBRIDE, WARDEN. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 221 W. Va. 760, 656 S. E. 2d 789.

No. 07–9167. COMRIE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–9174. SCHAEFFER-DUFFY *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied.

No. 07–9190. ALLEN *v.* UNITED STATES; and

No. 07–9300. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 841.

No. 07–9192. RANGEL ORTIZ, AKA RANGEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 252 Fed. Appx. 467.

No. 07–9194. MCWAINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9196. PHILLIPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 25.

No. 07–9200. GRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 321.

No. 07–9204. JURGEVICH *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 07–9206. NASON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–9209. ABREU-VASQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 253 Fed. Appx. 132.

No. 07–9215. BURTON *v.* YOUNG, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 909.

No. 07–9218. HENDRICKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–9221. RICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 367.

No. 07–9222. ROSALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 846.

No. 07–9225. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 850.

No. 07–9226. PATTERSON *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 401 Md. 76, 930 A. 2d 348.

No. 07–9230. TURNER *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–9232. PETERSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 361 N. C. 587, 652 S. E. 2d 216.

No. 07–9233. ADAMIC *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–9234. LONG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–9239. CABALLERO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–9240. MATTETE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 07–9243. ABU MEZER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9244. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 702.

No. 07–9248. SANDOVAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 385.

No. 07–9249. QUINONES-MUELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 514 F. 3d 393.

No. 07–9255. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 896.

No. 07–9257. MENDIETA-GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 307.

No. 07–9259. LONG NECK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–9264. LOVE *v.* ROBERTS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 58.

No. 07–9273. BARTH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–9275. WOODERTS *v.* BERKEBILE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 771.

No. 07–9278. GUERRERO-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 404.

No. 07–9283. DIAZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 254 Fed. Appx. 13.

No. 07–9284. RICHARDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 386.

No. 07–9286. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9288. WARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9290. ZALDIVAR-FUENTES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 488.

No. 07–9291. WHITE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 07–9294. PRICE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 204 Fed. Appx. 993.

No. 07–9298. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 324.

No. 07–9299. BAT, AKA BATRES-HERNANDEZ *v.* UNITED STATES (Reported below: 253 Fed. Appx. 430); CARREON-OVALLE *v.* UNITED STATES (253 Fed. Appx. 419); CASTILLO-QUINTERO *v.* UNITED STATES (253 Fed. Appx. 434); CORONADO-LOERA *v.* UNITED STATES (253 Fed. Appx. 421); CRUZ-SANCHEZ *v.* UNITED STATES (253 Fed. Appx. 424); FRAIRE-GONZALEZ *v.* UNITED STATES (253 Fed. Appx. 422); GARCIA-MEJIA *v.* UNITED STATES (253 Fed. Appx. 456); HERRERA-LONGORIA, AKA HERNANDEZ-GARCIA *v.* UNITED STATES (253 Fed. Appx. 459); MARTINEZ-CECENA *v.* UNITED STATES (253 Fed. Appx. 442); MOLINA-DE LA O *v.* UNITED STATES (253 Fed. Appx. 425); ORTIZ-MARTINEZ *v.* UNITED STATES (253 Fed. Appx. 426); OVALLE-CHAVEZ *v.* UNITED STATES (256 Fed. Appx. 663); SALAZAR-OROZCO *v.* UNITED STATES (253 Fed. Appx. 434); SARABIA-PICHARDO *v.* UNITED STATES (253 Fed. Appx. 436); and VELASQUEZ *v.* UNITED STATES (253 Fed. Appx. 443). C. A. 5th Cir. Certiorari denied.

No. 07–9302. DUPES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 513 F. 3d 338.

No. 07–9306. DADE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 973.

No. 07–9311. NORTHROP *v.* LINDSAY, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 256 Fed. Appx. 446.

No. 07–9313. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 14.

No. 07–9319. MATHIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 513.

No. 07–9326. LOWERY *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 960.

No. 07–9328. RAMOS PRODENCIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 43.

No. 07–9335. PERROTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 267.

No. 07–9336. RIGGINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 401.

No. 07–9338. BURKS *v.* HEPP. C. A. 7th Cir. Certiorari denied.

No. 07–9340. ZAMORA-ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–9343. TOWNSEND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 242 Fed. Appx. 885.

No. 07–9344. LANG *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–9350. LINDSAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 168.

No. 07–9352. NELSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 300.

No. 07–9353. DOUGLAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–9354. CORDOVA-BARRAZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 347.

No. 07–9357. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 387.

No. 07–9360. FISHER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 502 F. 3d 293.

No. 07–9365. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9367. HUTCHINSON, AKA PORTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 883.

No. 07–9370. FOSTER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 507 F. 3d 233.

No. 07–9371. CAMPOS-HERRERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 548.

No. 07–9373. DICKERSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 514 F. 3d 60.

No. 07–9374. CHOATE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 255.

No. 07–9380. PORTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9381. OLIVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 132.

No. 07–9382. MCQUEEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 170.

No. 07–9385. OBOT ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 254 Fed. Appx. 57.

No. 07–9388. CORTEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 887.

No. 07–9391. BOITNOTT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 939 A. 2d 75.

No. 07–9392. MCINTOSH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 254 Fed. Appx. 928.

No. 07–9393. ABDUL-JILLIL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 609.

No. 07–9396. SERENO-VILLASENOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 607.

No. 07–9397. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 186.

No. 07–9404. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 679.

No. 07–9417. VIERS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 381.

No. 07–659. PHOENIX OF BROWARD, INC. *v.* MCDONALD'S CORP. C. A. 11th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 489 F. 3d 1156.

No. 07–788. SHAW ET AL. *v.* CITY OF PASCO, WASHINGTON. Sup. Ct. Wash. Motion of Rental Housing Association of Puget Sound et al. for leave to file a brief as *amici curiae* out of time denied. Certiorari denied. Reported below: 161 Wash. 2d 450, 166 P. 3d 1157.

No. 07–791. SHANK, TRUSTEE OF THE SHANK IRREVOCABLE TRUST, ET AL. *v.* ADMINISTRATIVE COMMITTEE OF THE WAL-MART STORES, INC. ASSOCIATES' HEALTH AND WELFARE PLAN. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 500 F. 3d 834.

No. 07–868. OHIO PYRO, INC., ET AL. *v.* OHIO DEPARTMENT OF COMMERCE, DIVISION OF STATE FIRE MARSHAL, ET AL. Sup. Ct. Ohio. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 115 Ohio St. 3d 375, 875 N. E. 2d 550.

No. 07–886. IOWA *v.* BENTLEY. Sup. Ct. Iowa. Motion of respondent for leave to proceed *in forma pauperis* granted. Motion of National District Attorneys Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 739 N. W. 2d 296.

No. 07–906. ROHM AND HAAS PENSION PLAN *v.* WILLIAMS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 7th Cir. Motions of Chamber of Commerce of the United States of America and National Association of Manufacturers for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 497 F. 3d 710.

No. 07–924. MICROSOFT CORP. *v.* NOVELL, INC. C. A. 4th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 505 F. 3d 302.

No. 07–925. CHRISTIANSEN *v.* BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSN. ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 256 Fed. Appx. 957.

No. 07–957. GUPTA *v.* WALT DISNEY WORLD CO. C. A. 11th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 256 Fed. Appx. 279.

No. 07–982. ASAD *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 242 Fed. Appx. 443.

Rehearing Denied

No. 06–12099. GAYTAN-GONZALEZ, AKA GONZALEZ *v.* UNITED STATES, *ante*, p. 1061;

No. 07–338. STRUVE *v.* WICOMICO COUNTY, MARYLAND, *ante*, p. 1097;

No. 07–667. VEREEN *v.* DEUTSCHE BANK NATIONAL TRUST CO. ET AL., *ante*, p. 1143;

No. 07–737. SPRINGER *v.* INTERNAL REVENUE SERVICE EX REL. UNITED STATES, *ante*, p. 1143;

No. 07–738. SPRINGER *v.* INTERNAL REVENUE SERVICE EX REL. UNITED STATES, *ante*, p. 1143;

No. 07–739. SPRINGER *v.* INTERNAL REVENUE SERVICE EX REL. UNITED STATES, *ante*, p. 1143;

No. 07–6538. ASHRAF *v.* UNITED STATES, *ante*, p. 1104;

No. 07–7103. SIMMONS *v.* SHASTA COUNTY, CALIFORNIA, ET AL., *ante*, p. 1108;

No. 07–7233. CLARK *v.* ST. JOSEPH/CANDLER HEALTH SYSTEMS ET AL., *ante*, p. 1111;

No. 07–7272. LLOYD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1112;

No. 07–7277. WARD *v.* ILLINOIS, *ante*, p. 1113;

No. 07–7284. ELLIS *v.* TEXAS, *ante*, p. 1113;

No. 07–7340. GRIGGS *v.* UPTON, WARDEN, *ante*, p. 1114;

No. 07–7354. WILLIAMS *v.* PRINCE GEORGE'S COUNTY, MARYLAND, ET AL., *ante*, p. 1115;

No. 07–7454. SKORYCHENKO *v.* WOMEN'S COMMUNITY, INC., ET AL., *ante*, p. 1118;

No. 07–7462. SORLIEN *v.* MICHIGAN, *ante*, p. 1147;

No. 07–7495. MURRY *v.* MUKASEY, ATTORNEY GENERAL, *ante*, p. 1118;

No. 07–7505. THOMPSON *v.* SHILLING ET AL., *ante*, p. 1148;

No. 07–7523. HOFLAND *v.* HOFLAND, *ante*, p. 1148;

No. 07–7540. CASTALDO *v.* COLORADO INDUSTRIAL CLAIM APPEALS OFFICE ET AL., *ante*, p. 1148;

No. 07–7589. DAVIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1149;

No. 07–7752. CENSKE *v.* LAURILLA ET AL., *ante*, p. 1168;

No. 07–7757. IN RE POYDRAS, *ante*, p. 1165;

No. 07–7760. BURROUGHS *v.* BELLSOUTH TELECOMMUNICATIONS, INC., ET AL., *ante*, p. 1168;

No. 07–7831. LACEFIELD *v.* UNITED STATES, *ante*, p. 1126;

No. 07–8078. JACOBS *v.* INTERNAL REVENUE SERVICE, *ante*, p. 1155; and

No. 07–8263. IN RE TATE, *ante*, p. 1139. Petitions for rehearing denied.

MARCH 21, 2008

Dismissal Under Rule 46

No. 07–9143. SLOAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari dismissed under this Court's Rule 46.1. Reported below: 42 Cal. 4th 110, 164 P. 3d 568.

MARCH 24, 2008

Appeal Dismissed

No. 07–953. CITIZENS UNITED *v.* FEDERAL ELECTION COMMISSION. Appeal from D. C. D. C. dismissed for want of jurisdiction. JUSTICE BREYER would affirm the judgment. Reported below: 530 F. Supp. 2d 274.

Certiorari Granted—Vacated and Remanded

No. 07–9256. GONZALES SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Reported below: 252 Fed. Appx. 900; and

No. 07–9289. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Reported below: 254 Fed. Appx. 209. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Gall* v. *United States*, *ante*, p. 38.

Certiorari Dismissed

No. 07–8950. THOMPSON *v.* DAVIS, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 07–9195. MURRAY *v.* SOUTER, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE SOUTER took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. D–2452. IN RE DISCIPLINE OF MIRARCHI. Charles P. Mirarchi III, of West Chester, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 07M56. WEBSTER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS; and

No. 07M58. ROJAS-VEGA *v.* STATON ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 07M57. PHILLIPS *v.* UNITED PARCEL SERVICE, INC. Motion for leave to proceed *in forma pauperis* with the declaration of indigency filed under seal denied.

No. 07–9250. RECHANIK *v.* MICROSOFT CORP. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until April 14, 2008, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 07–9641. IN RE DUNBAR. Petition for writ of habeas corpus denied.

No. 07–950. IN RE TELLO;

No. 07–8790. IN RE ROLLE; and

No. 07–8940. IN RE ROLLE. Petitions for writs of mandamus denied.

No. 07–9379. IN RE MOTHERSHED. Petition for writ of mandamus denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

Certiorari Granted

No. 07–608. UNITED STATES *v.* HAYES. C. A. 4th Cir. Certiorari granted. Reported below: 482 F. 3d 749.

No. 07–751. PEARSON ET AL. *v.* CALLAHAN. C. A. 10th Cir. Certiorari granted. In addition to the questions presented by the petition, the parties are directed to brief and argue the following question: "Whether the Court's decision in *Saucier* v. *Katz*, 533 U. S. 194 (2001), should be overruled?" Reported below: 494 F. 3d 891.

Certiorari Denied

No. 07–662. AARP ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 489 F. 3d 558.

No. 07–801. DOBBS *v.* MEHRLICH. C. A. 2d Cir. Certiorari denied. Reported below: 227 Fed. Appx. 63.

No. 07–826. GRAHAM *v.* UNITED STATES; and
No. 07–850. DRESBACH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 484 F. 3d 413.

No. 07–839. ARPAIO, SHERIFF, MARICOPA COUNTY, ARIZONA, ET AL. *v.* DOE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. Ct. App. Ariz. Certiorari denied. Reported below: 214 Ariz. 237, 150 P. 3d 1258.

No. 07–935. SCRUGGS *v.* LEE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 229.

No. 07–941. AMERIQUEST MORTGAGE SECURITIES, INC. *v.* HAMM ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 506 F. 3d 525.

No. 07–947. RAISER *v.* KONO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 732.

No. 07–949. WHITE *v.* COLLINS, CHAPTER 7 TRUSTEE. C. A. 1st Cir. Certiorari denied.

No. 07–959. COUNTY MATERIALS CORP. *v.* ALLAN BLOCK CORP. C. A. 7th Cir. Certiorari denied. Reported below: 502 F. 3d 730.

No. 07–967. HORTON *v.* COMMISSION ON TEACHER CREDENTIALING. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–996. AHMED *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 07–1038. POLONE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 505 F. 3d 966.

No. 07–1045. PATRIDGE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 507 F. 3d 1092.

No. 07–1065. FIORILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 31.

No. 07–1069. BURROUGHS *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 254 Fed. Appx. 814.

No. 07–1084. LELAND *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–1088. ROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 502 F. 3d 521.

No. 07–1093. STONER *v.* SANTA CLARA COUNTY OFFICE OF EDUCATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 502 F. 3d 1116.

No. 07–7202. SMALLING *v.* STEARNES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–7685. COLINO, AKA COLINO-CAVERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–7806. LUCAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 499 F. 3d 769.

No. 07–7993. PENA-FLORES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 281.

No. 07–8083. SMITH ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 498 F. 3d 278.

No. 07–8157. LAWS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 939.

No. 07–8186. SIFUENTES-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 280.

No. 07–8261. NENNO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 3d 214.

No. 07–8356. GRANT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 490 F. 3d 627.

No. 07–8386. HENDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 34.

No. 07–8411. BEY *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 500 F. 3d 514.

No. 07–8432. BELDEN *v.* WYOMING DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 512.

No. 07–8763. EVANS *v.* SUTER, CLERK, SUPREME COURT OF THE UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 726.

No. 07–8791. SMITH *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8801. SALKELD *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8842. CHAMBERS *v.* JACOBSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–8843. ADONAI-ADONI *v.* KING, COMMISSIONER, PHILADELPHIA PRISON SYSTEM, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–8847. THOMAS *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8849. WALKER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8855. LANCASTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8861. MASTERS *v.* SCREEN ACTORS GUILD, INC. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 107.

No. 07–8868. NEE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–8870. MARTIN *v.* PEPPER. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 786.

No. 07–8871. WISE *v.* WASHINGTON DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 106.

No. 07–8873. WATKINS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 136 Wash. App. 240, 148 P. 3d 1112.

No. 07–8874. RAMIREZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8878. SANCHEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8879. THOMAS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 93.

No. 07–8880. WOLF *v.* SHEMWELL ET AL. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 07–8881. PATTERSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–8882. JONES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–8884. KEVILLY *v.* HONOROF ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 9 N. Y. 3d 1017, 881 N. E. 2d 217.

No. 07–8887. WILLIAMS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 967 So. 2d 735.

No. 07–8892. ANDERSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–8896. WALTON *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 07–8898. MATLOCK *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–8904. MESSER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 967 So. 2d 213.

No. 07–8909. BINGHAM *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8910. BENSON *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 210 Fed. Appx. 530.

No. 07–8911. ARIZMENDI *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8915. WARD *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–8919. VIELE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 07–8922. BONE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 07–8923. TISDOL *v.* MILGRAM, ATTORNEY GENERAL OF NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 07–8925. LISTON *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 212 Ore. App. 703, 159 P. 3d 335.

No. 07–8926. VAUGHN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 36 App. Div. 3d 434, 831 N. Y. S. 2d 27.

No. 07–8927. O'DONNELL *v.* GUNDY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–8928. GUGLIARA *v.* SEIDLIN, JUDGE, CIRCUIT COURT OF FLORIDA, 17TH JUDICIAL CIRCUIT, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–8929. HEATH *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 736 N. W. 2d 267.

No. 07–8933. GREENE *v.* ROBERT HALF INTERNATIONAL, INC. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 560.

No. 07–8936. IVEY *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Ct. Common Pleas of Orangeburg County, S. C. Certiorari denied.

No. 07–8943. DAVIS *v.* COX ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 146.

No. 07–8947. KEHANO *v.* HAWAII ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 202 Fed. Appx. 208.

No. 07–8951. THOMAS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 186.

No. 07–8954. SANABRIA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 932 A. 2d 262.

No. 07–8956. SMITH *v.* THORNTON, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–8957. SPUCK *v.* LYNCH. Super. Ct. Pa. Certiorari denied.

No. 07–8961. CARDENAS AMEZOLA *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8964. WILTZ *v.* MIDDLESEX COUNTY OFFICE OF THE PROSECUTOR ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 249 Fed. Appx. 944.

No. 07–8967. BUTLER *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 397.

No. 07–8968. BOWMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 372 Ill. App. 3d 1094, 940 N. E. 2d 305.

No. 07–8973. ENTZI *v.* REDMANN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 485 F. 3d 998.

No. 07–8974. DANIELSON *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 07–8976. VIRAY *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–8981. IBARRA ARREOLA *v.* SKOLNIK, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 154.

No. 07–8985. WILLIAMS *v.* BRESLIN, SUPERINTENDENT, ARTHUR KILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–9024. MORGAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 42 Cal. 4th 593, 170 P. 3d 129.

No. 07–9025. MENDOZA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 42 Cal. 4th 686, 171 P. 3d 2.

No. 07–9028. LOPEZ-CHAVEZ *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 425.

No. 07–9049. TRIPLETT *v.* KING, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL INSTITUTION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 107.

No. 07–9059. GUINN *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 489 F. 3d 351.

No. 07–9066. HABERSHAM *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 965 So. 2d 122.

No. 07–9070. TARVIN *v.* TEXAS BOARD OF CRIMINAL JUSTICE ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–9071. TAYLOR *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 07–9082. HEWITT *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 07–9092. DIAZ *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–9101. HARRIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 164 P. 3d 1103.

No. 07–9114. MORENCY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 274 Va. 569, 649 S. E. 2d 682.

No. 07–9117. BACCUS *v.* BURTT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 973.

No. 07–9121. AMALI *v.* MUKASEY, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 212.

No. 07–9139. DAVIS *v.* FARWELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 631.

No. 07–9160. HOLLOMAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 970 So. 2d 342.

No. 07–9197. SERFLING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 504 F. 3d 672.

No. 07–9198. THOMPSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–9220. RIVERA *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–9223. RODLAND *v.* PATRICK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE. C. A. 3d Cir. Certiorari denied.

No. 07–9229. TETI *v.* CLARKE, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied. Reported below: 507 F. 3d 50.

No. 07–9231. WATTS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 185 N. C. App. 539, 648 S. E. 2d 862.

No. 07–9235. MACAVILCA-PARCO *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 07–9252. REYES *v.* TOVAR. Ct. App. Ariz. Certiorari denied.

No. 07–9253. SAMPSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 969 So. 2d 1015.

No. 07–9254. SPEARS *v.* WEST VIRGINIA. Cir. Ct. Ohio County, W. Va. Certiorari denied.

No. 07–9263. SINGLETARY *v.* BROOKS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–9277. HOFFMAN *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–9292. WALSH *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 250 Fed. Appx. 310.

No. 07–9293. MILTON *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS. C. A. 5th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 655.

No. 07–9297. BOYCE *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–9301. DOCKERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 1000.

No. 07–9312. WATKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 667.

No. 07–9323. BENNETT *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 761.

No. 07–9329. MILLER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 243 Fed. Appx. 617.

No. 07–9345. MATHIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 255 Fed. Appx. 600.

No. 07–9384. CUMMINGS *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 1000.

No. 07–9399. VINCENT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 255 Fed. Appx. 572.

No. 07–9408. ROSE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 652.

No. 07–9410. SOLOMON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 901.

No. 07–9411. RUIZ-HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–9418. RIASCES TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9419. TELLIER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9422. GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 431.

No. 07–9423. GREENE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 305.

No. 07–9424. GRAYSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 170.

No. 07–9426. GOODLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9427. ARQUIMIDES IBARRA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 536.

No. 07–9437. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9438. GROSE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 190.

No. 07–9439. RODRIGUEZ-OLMOS, AKA OLMOS-RODRIGUEZ, AKA RODRIGUEZ, AKA OLMOS, AKA RODRIGUEZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 441.

No. 07–9440. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 421.

No. 07–9444. ANDUJAR-ARIAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 507 F. 3d 734.

No. 07–9445. ADAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 639.

No. 07–9449. ALLUMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9458. GONZALEZ-VALERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 507 F. 3d 749.

No. 07–9459. GOANA-CERVANTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 130.

No. 07–9463. WEBSTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9464. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 506 F. 3d 151.

No. 07–9467. WATSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 876.

No. 07–9473. ROSE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 542.

No. 07–9475. STURGEON *v.* RANDOLPH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–9477. SIMPSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 556.

No. 07–9479. LIRA-ESQUIVEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 509 F. 3d 820.

No. 07–9481. ROBERTS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 849.

No. 07–9485. TITLBACH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–9487. FOUCHE *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 07–9493. FERGUSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9495. FAIREY ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied.

No. 07–9498. RHINES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–9505. PEREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 256 Fed. Appx. 383.

No. 07–9507. LUA-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 84.

No. 07–9508. RODRIGUEZ-DURAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 507 F. 3d 749.

No. 07–9509. MORELIS-ESCALONA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 507 F. 3d 479.

No. 07–9514. WATKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 955.

No. 07–9515. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 951.

No. 07–9517. MCCRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 541.

No. 07–9518. LEMAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 266.

No. 07–9520. JONES *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–9521. MILANES-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 265.

No. 07–9523. TOSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 206.

No. 07–9527. CARBAJAL-DIAZ *v.* UNITED STATES (Reported below: 508 F. 3d 804); TAMAYO-ZARAGOZA *v.* UNITED STATES (262 Fed. Appx. 683); HERNANDEZ-MENDEZ *v.* UNITED STATES (262 Fed. Appx. 659); LOPEZ-ESPINOZA *v.* UNITED STATES (263 Fed. Appx. 431); LANDIN-BANDA *v.* UNITED STATES (262 Fed. Appx. 658); RAMIREZ-GOMEZ, AKA CAVAZOS-GOMEZ *v.* UNITED STATES (263 Fed. Appx. 432); DELGADO-ARANDA, AKA DELGADO *v.* UNITED STATES (263 Fed. Appx. 430); ROJAS *v.* UNITED STATES (265 Fed. Appx. 336); CHAVEZ-SIFUENTES *v.* UNITED STATES (266 Fed. Appx. 324); and ALANIZ-GARCIA *v.* UNITED STATES (262 Fed. Appx. 660). C. A. 5th Cir. Certiorari denied.

No. 07–9528. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 508 F. 3d 461.

No. 07–9533. AREVALO-HUERTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 94.

No. 07–9535. BUILES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–9536. PREYEAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 214.

No. 07–946. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM *v.* NEW YORK STOCK EXCHANGE, INC. C. A. 2d Cir.

Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 503 F. 3d 89.

No. 07–960. OHIO *v.* SILER. Sup. Ct. Ohio. Motion of National District Attorneys Association for leave to file a brief as *amicus curiae* granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 116 Ohio St. 3d 39, 876 N. E. 2d 534.

No. 07–965. MAURICE MITCHELL INNOVATIONS, L. P. *v.* INTEL CORP. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 249 Fed. Appx. 184.

No. 07–8286. OLIVEREZ *v.* ALAMGER, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

Rehearing Denied

No. 07–5888. JUDD *v.* UNITED STATES, *ante*, p. 933;

No. 07–7156. DALEY *v.* MASSACHUSETTS ET AL., *ante*, p. 1109;

No. 07–7172. HEIJNEN *v.* UNITED STATES, *ante*, p. 1051;

No. 07–7173. HEIJNEN *v.* UNITED STATES, *ante*, p. 1051;

No. 07–7223. JOSEPH *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 1111;

No. 07–7292. BROWN *v.* UNITED STATES, *ante*, p. 1190;

No. 07–7422. WARE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1117;

No. 07–7579. CREVELING *v.* TRESER ET AL., *ante*, p. 1120; and

No. 07–7585. COOPER *v.* MCDONOUGH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1149. Petitions for rehearing denied.

MARCH 31, 2008

Certiorari Granted—Vacated and Remanded

No. 07–9376. EVERHART *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gall* v. *United States*, *ante*, p. 38, and *Kimbrough* v. *United States*, *ante*, p. 85. Reported below: 245 Fed. Appx. 316.

Certiorari Dismissed

No. 07–9633. FIELDS *v.* UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 07M59. LUKER *v.* BEASLEY ET AL.; and

No. 07M60. TAYLOR ET UX. *v.* JACOBS ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06–7517. IRIZARRY *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1086.] Motion of the Solicitor General for divided argument granted.

No. 07–210. BRIDGE ET AL. *v.* PHOENIX BOND & INDEMNITY CO. ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1087.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–343. KENNEDY *v.* LOUISIANA. Sup. Ct. La. [Certiorari granted, *ante*, p. 1087.] Motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

No. 07–371. TAYLOR *v.* STURGELL, ACTING ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1136.] Motion of the Solicitor General for divided argument granted.

No. 07–411. PLAINS COMMERCE BANK *v.* LONG FAMILY LAND & CATTLE CO., INC., ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1087.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–544. CHRONES, WARDEN *v.* PULIDO. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1230.] Motion of respondent for appointment of counsel granted. J. Bradley O'Connell, Esq., of San Francisco, Cal., is appointed to serve as counsel for respondent in this case.

No. 07–811. MORRIS ET AL. *v.* CENTER FOR BIO-ETHICAL REFORM, INC., ET AL. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 07–9736. IN RE CRUTHIRD;
No. 07–9744. IN RE RIVERS; and
No. 07–9771. IN RE VELA. Petitions for writs of habeas corpus denied.

No. 07–1106. IN RE BRAQUET; and
No. 07–9017. IN RE GLAGOLA. Petitions for writs of mandamus denied.

No. 07–9065. IN RE HARRIS. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Certiorari Granted

No. 07–665. PLEASANT GROVE CITY, UTAH, ET AL. *v.* SUMMUM. C. A. 10th Cir. Certiorari granted. Reported below: 483 F. 3d 1044.

No. 07–869. YSURSA, SECRETARY OF STATE OF IDAHO, ET AL. *v.* POCATELLO EDUCATION ASSN. ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 504 F. 3d 1053.

Certiorari Denied

No. 06–11554. RAMIREZ CARDENAS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–11572. ROCHA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–11696. MORENO RAMOS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 06–11711. GARCIA *v.* TEXAS; and
No. 06–11760. FIERRO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–605. HURN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 496 F. 3d 784.

No. 07–673. REINER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 500 F. 3d 10.

No. 07–685. COMMONWEALTH OF PUERTO RICO *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 490 F. 3d 50.

No. 07–816. UNITED STATES *v.* RAYBURN HOUSE OFFICE BUILDING, ROOM 2113, WASHINGTON, D. C. 20515. C. A. D. C. Cir. Certiorari denied. Reported below: 497 F. 3d 654.

No. 07–828. SPARTON TECHNOLOGY, INC. *v.* UTIL-LINK, LLC, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 684.

No. 07–838. ALPHAPHARM PTY., LTD., ET AL. *v.* TAKEDA CHEMICAL INDUSTRIES, LTD., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 492 F. 3d 1350.

No. 07–842. ABN AMRO VERZEKERINGEN BV *v.* GEOLOGISTICS AMERICAS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 485 F. 3d 85.

No. 07–849. COLLINS ET AL. *v.* D. R. HORTON, INC. C. A. 9th Cir. Certiorari denied. Reported below: 505 F. 3d 874.

No. 07–968. GOMEZ *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 951 So. 2d 71.

No. 07–969. MEYERS *v.* RIVERSIDE HOSPITAL, INC., ET AL. Sup. Ct. Va. Certiorari denied.

No. 07–970. ALDEN *v.* ST. JOSEPH'S HOSPITAL HEALTH CENTER. Ct. App. N. Y. Certiorari denied. Reported below: 9 N. Y. 3d 952, 877 N. E. 2d 295.

No. 07–972. BOARD OF COMMISSIONERS OF DICKINSON COUNTY, KANSAS, ET AL. *v.* ABILENE RETAIL #30, INC. C. A. 10th Cir. Certiorari denied. Reported below: 492 F. 3d 1164.

No. 07–981. MEYERS *v.* PARTRIDGE. Sup. Ct. Va. Certiorari denied.

No. 07–983. WIDEMAN *v.* COLORADO FAMILY ENFORCEMENT SERVICES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 611.

No. 07–985. GARLEIGH ET UX. *v.* TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 07–986. HUGHES *v.* RIPLEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 506 F. 3d 675.

No. 07–987. WISNIEWSKI ET UX., ON BEHALF OF WISNIEWSKI, A MINOR *v.* BOARD OF EDUCATION OF THE WEEDSPORT CENTRAL SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 494 F. 3d 34.

No. 07–989. APPLEWHITE *v.* BRIBER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 506 F. 3d 181.

No. 07–994. HAWKINS ET AL. *v.* WEEKS, JUDGE, DISTRICT COURT OF TEXAS, 42D DISTRICT, ET AL. (Reported below: 235 Fed. Appx. 255); HAWKINS ET AL. *v.* NATIONAL INSTITUTE OF REALTIME REPORTERS, INC. (235 Fed. Appx. 248); and HAWKINS ET AL. *v.* SELF ET AL. (235 Fed. Appx. 251). C. A. 5th Cir. Certiorari denied.

No. 07–998. CIRCUIT CITY STORES, INC. *v.* GENTRY. Sup. Ct. Cal. Certiorari denied. Reported below: 42 Cal. 4th 443, 165 P. 3d 556.

No. 07–1023. HIRSCH *v.* DEPARTMENT OF AGRICULTURE. C. A. D. C. Cir. Certiorari denied. Reported below: 497 F. 3d 681.

No. 07–1033. CHEMTALL INC. ET AL. *v.* STERN ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 221 W. Va. 415, 655 S. E. 2d 161.

No. 07–1041. JAYHAWK CAFE *v.* COLORADO SPRINGS LIQUOR AND BEER LICENSING BOARD ET AL. Ct. App. Colo. Certiorari denied. Reported below: 165 P. 3d 821.

No. 07–1046. EXECUTIVE TOWERS AT LIDO, LLC, ET AL. *v.* CITY OF LONG BEACH, NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 37 App. Div. 3d 650, 831 N. Y. S. 2d 445.

No. 07–1062. STANLEY *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 170 P. 3d 782.

No. 07–1071. KIRKLAND *v.* TAMPLIN ET AL. Ct. App. Ga. Certiorari denied. Reported below: 285 Ga. App. 241, 645 S. E. 2d 653.

No. 07–1085. MACK *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 955 So. 2d 51.

No. 07–5810. MERCADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 3d 654.

No. 07–6814. GOMEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–7403. CRAWLEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 592 Pa. 222, 924 A. 2d 612.

No. 07–7432. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 884.

No. 07–7512. REED *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–7739. WEMMERING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 372.

No. 07–7853. ANDRUS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 483 F. 3d 711 and 499 F. 3d 1162.

No. 07–7925. NASCIMENTO ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 491 F. 3d 25.

No. 07–8076. ASHWORTH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 409.

No. 07–8160. MALDONADO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–8435. MCMANUS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 868 N. E. 2d 778.

No. 07–8454. TAYLOR *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 498 F. 3d 306.

No. 07–8499. MILLS *v.* HURLEY MEDICAL CENTER. C. A. 6th Cir. Certiorari denied.

No. 07–8977. VELASQUEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 152 Cal. App. 4th 1503, 62 Cal. Rptr. 3d 164.

No. 07–8989. CLAY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–8996. DRISCOLL *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–8997. ROSADO *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–8999. SEPEDA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9002. JENNINGS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 490 F. 3d 1230.

No. 07–9006. BRALEY *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–9011. PADILLA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9020. VALENTINE *v.* BURTT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 861.

No. 07–9022. WINER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–9035. SARACOGLU *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 152 Cal. App. 4th 1584, 62 Cal. Rptr. 3d 418.

No. 07–9038. BARRAGAN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–9040. ASHANTI *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–9042. BRODERICK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9043. WRIGHT *v.* DALEY ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–9044. KOENIG *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 07–9048. YANEZ *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–9054. HUNG HA *v.* ROSS ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–9056. MINNFEE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9064. HARRIS, AKA HARRIS-BEY *v.* KILPATRICK ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–9067. ARZAGA *v.* CAMPBELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–9068. BRYNER *v.* BRYNER. Ct. App. Utah. Certiorari denied.

No. 07–9072. REDD *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 642.

No. 07–9077. HARTSFIELD *v.* COLBURN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 491 F. 3d 394.

No. 07–9079. FRAZIER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–9081. FIGUEROA *v.* WEISENFREUND ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 255 Fed. Appx. 595.

No. 07–9085. HILL *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–9088. GABRILL *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–9089. HARDIN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–9102. HOLMES *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 839.

No. 07–9105. BROWN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9107. THONG LE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 967 So. 2d 627.

No. 07–9122. PETE *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–9123. MOON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–9124. DAVIDSON *v.* WASHINGTON, WARDEN. Super. Ct. Calhoun County, Ga. Certiorari denied.

No. 07–9129. GONZALES *v.* PACE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 610.

No. 07–9138. CHEWNING *v.* OHIO. Ct. App. Ohio, Clermont County. Certiorari denied.

No. 07–9141. GILLEY *v.* MORROW. C. A. 9th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 519.

No. 07–9247. RUIZ ET AL. *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–9272. BENITEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–9280. KENON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 968 So. 2d 579.

No. 07–9304. DOMINGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 204.

No. 07–9305. CUPE *v.* BLACKWELL, ADMINISTRATOR, EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN. C. A. 3d Cir. Certiorari denied.

No. 07–9307. SANDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 74.

No. 07–9318. JONES *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied.

No. 07–9332. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 974.

No. 07–9339. ALMOND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 697.

No. 07–9368. FREEMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 507 F. 3d 793.

No. 07–9398. MOORE *v.* HARDY, CORRECTIONAL ADMINISTRATOR, NASH CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 550.

No. 07–9403. LUNA *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–9409. RASCO *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 07–9430. FAULKNER *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 68.

No. 07–9448. BELTRAN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 150 N. C. App. 438, 563 S. E. 2d 641.

No. 07–9457. KLUMPP *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 07–9468. DAVIS *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–9540. GARCIA-CASTANEDA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 316.

No. 07–9541. HERIOT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 496 F. 3d 601.

No. 07–9542. HASAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 710.

No. 07–9543. HANRAHAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 508 F. 3d 962.

No. 07–9546. ROSAS *v.* UNITED STATES (Reported below: 255 Fed. Appx. 287); MARCIAL-GONZALEZ *v.* UNITED STATES; ARIAS *v.* UNITED STATES; LEDESMA-ACEVES *v.* UNITED STATES; and JIMENEZ-CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9551. DENT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 626.

No. 07–9558. MCMILLAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 257 Fed. Appx. 477.

No. 07–9559. KASPER *v.* ESTEP, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 202.

No. 07–9562. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9567. CAULFIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9569. WATSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 249 Fed. Appx. 253.

No. 07–9570. MORROW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–9572. MOLINA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 255 Fed. Appx. 563.

No. 07–9574. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 960.

No. 07–9579. GAUSIN-CENISEROS, AKA GARCIN-CENICEROS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 875.

No. 07–9583. AGUILAR-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 987.

No. 07–9584. ALVARADO-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 99.

No. 07–9585. BROWN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 508 F. 3d 1066.

No. 07–9587. PEREZ-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 683.

No. 07–9595. DEAKLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 791.

No. 07–9598. GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–9599. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9601. VILLANUEVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 87.

No. 07–9602. HOBBS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 509 F. 3d 353.

No. 07–9604. MATHIS *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 07–9605. MARKLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 553.

No. 07–9612. HAMMOUDA *v.* ZICKEFOOSE, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–9613. HIMMELREICH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–9614. NINO-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 792.

No. 07–9617. BERTLING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 510 F. 3d 804.

No. 07–9618. BECKSTEAD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 500 F. 3d 1154.

No. 07–9620. GORDON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 950.

No. 07–9624. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 254.

No. 07–9627. ROBERTSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–9629. MURRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–9632. GARCIA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9634. GRANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 231 Fed. Appx. 264.

No. 07–9635. HILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9637. HARLAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 599.

No. 07–9638. FOSTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9640. ESTRADA, AKA ESTRADA-GUERRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 203.

No. 07–9646. KIMBALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 3.

No. 07–9647. LENGEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 426.

No. 07–9648. JACKMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 248 Fed. Appx. 333.

No. 07–9653. TAB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 684.

No. 07–9656. MEDINA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–9658. TORRES-ESPINOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 563.

No. 07–9726. GIAMPAOLO *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 375 Ill. App. 3d 1148, 945 N. E. 2d 699.

No. 07–1087 (07A701). DOE ET AL. *v.* KLEIN ET AL. C. A. 9th Cir. Application for injunction, addressed to JUSTICE SCALIA and referred to the Court, denied. Certiorari denied. Reported below: 254 Fed. Appx. 626.

No. 07–9208. PRECIADO *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

Rehearing Denied

No. 07–7015. BAIL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1106;

No. 07–7116. JACKSON *v.* CALIFORNIA, *ante*, p. 1108;

No. 07–8055. VALENTIN *v.* UNITED STATES, *ante*, p. 1154; and

No. 07–8640. VALENTINE *v.* UNITED STATES, *ante*, p. 1217. Petitions for rehearing denied.

No. 07–601. WILLIAMS *v.* DISTRICT OF COLUMBIA COURT OF APPEALS ET AL., *ante*, p. 1141. Motion of petitioner to defer consideration of petition for rehearing denied. Petition for rehearing denied.

No. 07–7328. SANDERS *v.* EXXON MOBIL CORP. ET AL., *ante*, p. 1131. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

APRIL 8, 2008

Dismissal Under Rule 46

No. 07–997. TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC. *v.* LEJEUNE. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 247 Fed. Appx. 572.

APRIL 11, 2008

Miscellaneous Orders

No. 06–923. METROPOLITAN LIFE INSURANCE CO. ET AL. *v.* GLENN. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1161.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–1505. MEACHAM ET AL. *v.* KNOLLS ATOMIC POWER LABORATORY, AKA KAPL, INC., ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1162.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 07–474. ENGQUIST *v.* OREGON DEPARTMENT OF AGRICULTURE ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1136.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

APRIL 14, 2008

Certiorari Granted—Vacated and Remanded

No. 07–7937. PRUITT *v.* UNITED STATES. C. A. 10th Cir. Reported below: 502 F. 3d 1154; and

No. 07–8292. WARREN *v.* UNITED STATES. C. A. 6th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Gall* v. *United States*, *ante*, p. 38.

Certiorari Dismissed

No. 07–9179. STRINGER *v.* AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA ET AL. Ct. App. Miss. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certio-

rari dismissed. See this Court's Rule 39.8. Reported below: 969 So. 2d 113.

No. 07–9262. SKILLERN *v.* GARRISON, SHERIFF, CHEROKEE COUNTY, GEORGIA. Sup. Ct. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 07–9268. XIANGYUAN ZHU *v.* FEDERAL HOUSING FINANCE BOARD ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 07A584. MUHAMMAD *v.* UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ET AL. Application for stay, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. D–2449. IN RE DISBARMENT OF HOENIGER. Disbarment entered. [For earlier order herein, see *ante*, p. 1175.]

No. D–2450. IN RE DISBARMENT OF ABADY. Disbarment entered. [For earlier order herein, see *ante*, p. 1175.]

No. 07M61. NOE *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY; and

No. 07M62. CAMPBELL *v.* ISOLATION TECHNOLOGIES, INC. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 134, Orig. NEW JERSEY *v.* DELAWARE. Ralph I. Lancaster, Jr., Esq., of Portland, Me., the Special Master in this case, is hereby discharged with the thanks of the Court. [For earlier order herein, see, *e. g.*, *ante*, p. 972.]

No. 06–1195. BOUMEDIENE ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL.; and

No. 06–1196. AL ODAH, NEXT FRIEND OF AL ODAH, ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. [Certiorari granted,

551 U. S. 1160.] Motion of the Solicitor General for leave to file a supplemental brief after argument granted.

No. 07–568. EXPERIENCE HENDRIX, LLC, ET AL. *v.* JAMES MARSHALL HENDRIX FOUNDATION, *ante*, p. 1100. Motion of respondent for attorney's fees and costs referred to the United States Court of Appeals for the Ninth Circuit for adjudication.

No. 07–8017. THOMPSON *v.* DAVIS, WARDEN (two judgments). C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1173] denied.

No. 07–8122. BROWN *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1173] denied.

No. 07–9358. MATHIS *v.* WACHOVIA BANK. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until May 5, 2008, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. JUSTICE THOMAS took no part in the consideration or decision of this motion.

No. 06–10946. IN RE JACKSON;
No. 07–9795. IN RE SOKOLSKY;
No. 07–9796. IN RE SMITH;
No. 07–9852. IN RE TATE;
No. 07–9913. IN RE HERNANDEZ;
No. 07–9975. IN RE HAYNES;
No. 07–10006. IN RE UMBARGER; and
No. 07–10007. IN RE UMBARGER. Petitions for writs of habeas corpus denied.

No. 07–9261. IN RE SHABAZZ;
No. 07–9361. IN RE WISE;
No. 07–9366. IN RE WILLIAMS;
No. 07–9496. IN RE GRIFFIN; and
No. 07–9578. IN RE HEFLEY. Petitions for writs of mandamus denied.

No. 07–1140. IN RE BARRINGER. Petition for writ of mandamus and/or prohibition denied.

No. 07–9241. IN RE MONTFORD. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 07–588. ENTERGY CORP. *v.* RIVERKEEPER, INC., ET AL.;
No. 07–589. PSEG FOSSIL LLC ET AL. *v.* RIVERKEEPER, INC.; and
No. 07–597. UTILITY WATER ACT GROUP *v.* RIVERKEEPER, INC., ET AL. C. A. 2d Cir. Certiorari granted limited to the following question: "Whether §316(b) of the Clean Water Act, 33 U. S. C. §1326(b), authorizes the Environmental Protection Agency to compare costs with benefits in determining the 'best technology available for minimizing adverse environmental impact' at cooling water intake structures." Cases consolidated, and a total of one hour allotted for oral argument. Reported below: 475 F. 3d 83.

No. 07–854. VAN DE KAMP ET AL. *v.* GOLDSTEIN. C. A. 9th Cir. Certiorari granted. Reported below: 481 F. 3d 1170.

Certiorari Denied

No. 07–595. SHER *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 1st Cir. Certiorari denied. Reported below: 488 F. 3d 489.

No. 07–645. RICHARD *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 167.

No. 07–700. RICOH ELECTRONICS, INC. *v.* HALUCK ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. Reported below: 151 Cal. App. 4th 994, 60 Cal. Rptr. 3d 542.

No. 07–733. LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON *v.* NARA. C. A. 3d Cir. Certiorari denied. Reported below: 488 F. 3d 187.

No. 07–735. HUGHES ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 498 F. 3d 1334.

No. 07–742. BEVERLY BOULEVARD, LLC *v.* CITY OF WEST HOLLYWOOD, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 238 Fed. Appx. 210.

No. 07–766. RAYBORN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 495 F. 3d 328.

No. 07–785. WALLACE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 936 A. 2d 757.

No. 07–795. HOLLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 488 F. 3d 1298.

No. 07–798. ALI *v.* MUKASEY, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 502 F. 3d 659.

No. 07–835. COLORADO OFFICE OF CONSUMER COUNSEL ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 490 F. 3d 954.

No. 07–853. UNITED ARAB EMIRATES ET AL. *v.* EL-HADAD. C. A. D. C. Cir. Certiorari denied. Reported below: 496 F. 3d 658.

No. 07–859. CHEMJECT INTERNATIONAL, INC. *v.* SOUTHWESTERN BELL TELEPHONE CO. ET AL. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 07–862. KITTKA *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–880. LEONARD ET UX. *v.* NATIONWIDE MUTUAL INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 499 F. 3d 419.

No. 07–883. SKELTON *v.* SARA LEE CORP. C. A. 6th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 450.

No. 07–890. ARE ACQUISITIONS, LLC *v.* HANNA ET AL. Ct. App. Md. Certiorari denied. Reported below: 400 Md. 650, 929 A. 2d 892.

No. 07–893. PANDO FRANCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 503 F. 3d 389.

No. 07–904. CLAYTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 506 F. 3d 405.

No. 07–905. DYNO *v.* VILLAGE OF JOHNSON CITY, NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 240 Fed. Appx. 432.

No. 07–929. ROSSI ET AL. *v.* JOSEPH CHRIS PERSONNEL SERVICES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 988.

No. 07–1002. EL TORO MATERIALS CO., INC., ET AL. *v.* SADDLEBACK VALLEY COMMUNITY CHURCH. C. A. 9th Cir. Certiorari denied. Reported below: 504 F. 3d 978.

No. 07–1004. DIRECTV, INC., ET AL. *v.* TREESH, COMMISSIONER, KENTUCKY DEPARTMENT OF REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 3d 471.

No. 07–1005. GULATI *v.* MUKASEY, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied.

No. 07–1011. TINKHAM ET AL. *v.* KELLY ET AL. C. A. 1st Cir. Certiorari denied.

No. 07–1017. CASTLE ROCK ESTATES, LLC *v.* NEW JERSEY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–1018. GILGALLON ET AL. *v.* HUDSON COUNTY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 242 Fed. Appx. 798.

No. 07–1021. JUNG BEA HAN *v.* GE CAPITAL SMALL BUSINESS FINANCE CORP. C. A. 11th Cir. Certiorari denied.

No. 07–1022. HOOPER *v.* CITY OF MURFREESBORO, TENNESSEE. Ct. App. Tenn. Certiorari denied.

No. 07–1025. ROGERS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 282 Ga. 659, 653 S. E. 2d 31.

No. 07–1027. KAPRELIAN *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 07–1032. LEADER *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–1034. VAN DEELEN *v.* CITY OF KANSAS CITY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 723.

No. 07–1035. MERSWIN *v.* WILLIAMS COS., INC. C. A. 10th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 897.

No. 07–1039. SPEARS *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 940 So. 2d 135.

No. 07–1040. SMITH *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 07–1048. POPE *v.* PILGRIM'S PRIDE CORP. C. A. 11th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 282.

No. 07–1050. WHITE ET AL. *v.* WHITTINGTON, TRUSTEE FOR THE HOMER A. WHITTINGTON, JR., REVOCABLE TRUST, ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 980 So. 2d 261.

No. 07–1051. TUCOEMAS FEDERAL CREDIT UNION ET AL. *v.* MCGEE. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 153 Cal. App. 4th 1351, 63 Cal. Rptr. 3d 808.

No. 07–1057. MYKLEBUST *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 210 Ore. App. 756, 153 P. 3d 178.

No. 07–1072. FLETCHER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 372 Ill. App. 3d 1095, 940 N. E. 2d 305.

No. 07–1076. DELENE ET UX. *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–1083. UNITED ELECTRICAL CONTRACTORS ASSN. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 258 Fed. Appx. 331.

No. 07–1098. HOELSCHER-KOSEL *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS. C. A. 5th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 509.

No. 07–1105. BARTUCCI *v.* JACKSON. C. A. 5th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 254.

No. 07–1115. KIRKLAND *v.* KIRKLAND ET AL. Ct. App. Ga. Certiorari denied. Reported below: 285 Ga. App. 238, 645 S. E. 2d 626.

No. 07–1126. ABRAHAM ET AL. *v.* UNION PACIFIC RAILROAD CO. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 233 S. W. 3d 13.

No. 07–1143. SCHAEFER *v.* LAMONE, ADMINISTRATOR, MARYLAND STATE BOARD OF ELECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 484.

No. 07–1145. SAVE-A-PATRIOT FELLOWSHIP ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 65.

No. 07–1149. RUTHERFORD ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 145.

No. 07–1157. SMITH *v.* OLIN CORP. C. A. 11th Cir. Certiorari denied. Reported below: 225 Fed. Appx. 852.

No. 07–1162. GANIM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 510 F. 3d 134 and 256 Fed. Appx. 399.

No. 07–1166. OSBORNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 246.

No. 07–1176. PACK *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 65 M. J. 381.

No. 07–7397. MCLAUGHLIN *v.* RYKER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–7463. ROUNDTREE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–7726. KOUROUMA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 228 Fed. Appx. 288.

No. 07–7841. ORMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 486 F. 3d 1170.

No. 07–7997. BAER *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 866 N. E. 2d 752.

No. 07–8110. PRIEST *v.* UNITED STATES; and
No. 07–8323. MCELHINNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: No. 07–8110, 243 Fed. Appx. 251; No. 07–8323, 491 F. 3d 1109 and 243 Fed. Appx. 251.

No. 07–8190. REASE *v.* AT&T CORP. C. A. 11th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 481.

No. 07–8212. FINK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 499 F. 3d 81.

No. 07–8233. DALACK *v.* VILLAGE OF TEQUESTA, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 223 Fed. Appx. 885.

No. 07–8237. STEPHENSON *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 864 N. E. 2d 1022.

No. 07–8320. THURSTON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–8357. GARCIA, AKA ZACHHI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 241 Fed. Appx. 770.

No. 07–8381. MCCULLER *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 497 Mich. 672, 739 N. W. 2d 563.

No. 07–8436. PITTMAN *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 373 S. C. 527, 647 S. E. 2d 144.

No. 07–8536. ROBERSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–8599. THOMAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–8610. WOOD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 503 F. 3d 408.

No. 07–8628. STANKO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 491 F. 3d 408.

No. 07–8683. NIEDERSTADT *v.* NIXON, ATTORNEY GENERAL OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 505 F. 3d 832.

No. 07–8724. FIELDS *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 503 F. 3d 755.

No. 07–8765. DOUGLAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 489 F. 3d 1117.

No. 07–8841. SATCHEL *v.* SCHOOL BOARD OF HILLSBORO COUNTY. C. A. 11th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 626.

No. 07–9109. DE JESUS ESTACIO *v.* OREGON JUDICIAL DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–9110. CAMPBELL *v.* TREVINO ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–9125. GONZALES-VALDES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–9126. GARREN *v.* RAYMOND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 309.

No. 07–9127. HAHN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9128. HAMM *v.* RENDELL, GOVERNOR OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 246 Fed. Appx. 150.

No. 07–9130. HUNT *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9132. DELGADO GAXIOLA *v.* TILTON, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 07–9135. CURRY *v.* CHANDLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–9136. COLLINS *v.* WALLER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–9137. CARMELL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9145. SOLORIO *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 692.

No. 07–9146. Ross *v.* Triad Financial Corp. et al. C. A. 4th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 742.

No. 07–9147. Medley *v.* Runnels, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 506 F. 3d 857.

No. 07–9150. Marshall *v.* Johnson, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 225.

No. 07–9156. Florence *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–9157. Giddens *v.* Calhoun State Prison et al. C. A. 11th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 847.

No. 07–9159. Goree *v.* Burt, Warden. C. A. 6th Cir. Certiorari denied.

No. 07–9161. Rega *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 593 Pa. 659, 933 A. 2d 997.

No. 07–9164. Conlin *v.* Lange et al. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 618.

No. 07–9166. Childs *v.* Ortiz, Executive Director, Colorado Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 139.

No. 07–9168. Coburn *v.* Brown, Warden. C. A. 9th Cir. Certiorari denied.

No. 07–9169. Etcheverry *v.* Tilton, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 277.

No. 07–9175. Wheeler *v.* Shannon, Superintendent, State Correctional Institution at Frackville, et al. C. A. 3d Cir. Certiorari denied.

No. 07–9176. Waters *v.* Carlton, Warden. C. A. 6th Cir. Certiorari denied.

No. 07–9177. Williams *v.* Kerestes, Superintendent, State Correctional Institution at Mahanoy, et al. C. A. 3d Cir. Certiorari denied.

No. 07–9180. RAGLAND *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 36 App. Div. 3d 943, 829 N. Y. S. 2d 189.

No. 07–9181. SAUNDERS *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW. C. A. 3d Cir. Certiorari denied.

No. 07–9182. MOORE *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–9184. BAKER *v.* HUBREGTSE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–9188. SMITH *v.* VASBINDER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–9193. NALI *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–9199. HOFFMAN *v.* HOFFMAN. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–9201. LEWIS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 963 So. 2d 248.

No. 07–9202. LEBLANC *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–9205. MCDONALD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–9213. BRADFORD *v.* SUPERIOR COURT OF CALIFORNIA, KINGS COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–9214. BOONE *v.* SMITH, CHIEF JUDGE, SUPERIOR COURT OF GEORGIA, LEE COUNTY, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–9216. BERRYHILL *v.* DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 07–9217. CHAPMAN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 135 Wash. App. 1031.

No. 07–9227. SMITH *v.* LIBERTY CHRYSLER-PLYMOUTH-DODGE, INC., ET AL. Ct. App. Ga. Certiorari denied. Reported below: 285 Ga. App. 606, 647 S. E. 2d 315.

No. 07–9236. BALZAROTTI *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–9237. BROWN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–9238. CARLSON *v.* AMERICAN EXPRESS FINANCIAL ADVISORS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 633.

No. 07–9242. BRANUM *v.* CHAMBLESS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 99.

No. 07–9245. TOOMBS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9246. WARD *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–9251. BONILLA RAMIREZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–9258. PENIGAR *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9260. SAMPLE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–9265. PADGETT *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–9269. ZOCHLINSKI *v.* UNIVERSITY OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 418.

No. 07–9270. EGGERS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 07–9271. ZUCKERMAN *v.* BOROUGH OF HIGHLAND PARK, NEW JERSEY, ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–9274. BROWN *v.* CHESNEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT RETREAT. C. A. 3d Cir. Certiorari denied.

No. 07–9276. FOMBY *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–9279. GREEN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–9282. CHALEUNSOUK *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–9285. DICKEY *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 07–9287. VALE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 958 So. 2d 966.

No. 07–9295. LYNCH *v.* BULMAN ET AL. C. A. 10th Cir. Certiorari denied.

No. 07–9296. AVILES ARMENTA *v.* RUPERT, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 32.

No. 07–9303. CUMMINGS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 361 N. C. 438, 648 S. E. 2d 788.

No. 07–9308. MUHAMMAD *v.* KELLY, WARDEN. Sup. Ct. Va. Certiorari denied. Reported below: 274 Va. 3, 646 S. E. 2d 182.

No. 07–9309. MOORE *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 07–9310. PATRICK *v.* ROCHESTER ET UX. Ct. Civ. App. Ala. Certiorari denied. Reported below: 12 So. 3d 177.

No. 07–9315. ANDREW *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 164 P. 3d 176 and 168 P. 3d 1150.

No. 07–9316. WILLIAMS *v.* HILDERBRAND ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–9320. MASS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–9321. KUPERMAN *v.* CATTELL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 07–9322. REULE *v.* SHERWOOD VALLEY I COUNCIL OF CO-OWNERS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 227.

No. 07–9325. MARSH *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 07–9327. MARLIN *v.* ALEXANDRE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 374.

No. 07–9331. THANH VAN TRAN *v.* PHAM ET AL. Ct. App. Minn. Certiorari denied.

No. 07–9333. WORD *v.* CROCE ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–9334. MORGAN *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–9337. CY R. *v.* CITY OF NEW YORK, NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 43 App. Div. 3d 267, 841 N. Y. S. 2d 25.

No. 07–9341. PHIPPEN *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–9342. PARKER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–9346. JACKSON *v.* ALMAGER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–9347. MILES *v.* ARAMARK CORRECTIONAL SERVICE AT CURRAN FROMHOLD CORRECTIONAL FACILITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 236 Fed. Appx. 746.

No. 07–9348. RANES *v.* OVERTON. C. A. 6th Cir. Certiorari denied.

No. 07–9349. ROGERS *v.* WOOLDRIDGE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 862.

No. 07–9356. HOFFMANN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 07–9362. BROWN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 982 So. 2d 565.

No. 07–9363. BRAND *v.* SKOLNIK, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 3.

No. 07–9364. BURKHEAD *v.* MOTLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–9377. ROGERS *v.* THURMER, DEPUTY WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–9383. MARTINEZ *v.* MINNIS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 261.

No. 07–9386. POWELL *v.* ROMANOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–9387. ORDWAY *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 07–9400. TAFOYA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 42 Cal. 4th 147, 164 P. 3d 590.

No. 07–9421. POINDEXTER *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 07–9428. HOOD *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–9432. HAGENNO *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 702.

No. 07–9434. MARION *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 232 Fed. Appx. 73.

No. 07–9441. SETIAWAN *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 700.

No. 07–9447. BALL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–9470. CARRERO-VASQUEZ *v.* MUKASEY, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied.

No. 07–9482. BOULDIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 541.

No. 07–9491. IVORY *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 509 F. 3d 284.

No. 07–9494. FOSTER *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–9497. RIDDICK *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 974.

No. 07–9513. TAYLOR *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 249 Fed. Appx. 274.

No. 07–9525. TIRONI *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 724.

No. 07–9529. BORDEN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 39 App. Div. 3d 1242, 835 N. Y. S. 2d 786.

No. 07–9545. SANDERS, AKA BROWN, AKA MCKINNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 161.

No. 07–9554. CRAWFORD *v.* BASSETT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 13.

No. 07–9556. PEYRAVI *v.* CUELLAR ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–9561. RIVERA *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 976 So. 2d 1112.

No. 07–9563. ROBEY *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 253 Fed. Appx. 933.

No. 07–9571. MILLS *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Henderson County, N. C. Certiorari denied.

No. 07–9573. COFFEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–9577. HEFLEY *v.* VILLAGE OF CALUMET PARK, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 276.

No. 07–9582. WHITE *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–9589. OSBORNE *v.* BERGH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–9596. DELANEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 375 Ill. App. 3d 1138, 945 N. E. 2d 695.

No. 07–9597. CARR *v.* BALLARD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 956.

No. 07–9600. TABOR *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 07–9608. MOSLEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 374 Ill. App. 3d 1131, 944 N. E. 2d 927.

No. 07–9610. RODRIGUEZ-FELISOLA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 196.

No. 07–9611. SMALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 560.

No. 07–9622. TALLY *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 248.

No. 07–9630. FOSTER *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 221 W. Va. 629, 656 S. E. 2d 74.

No. 07–9644. HERRERA-SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 794.

No. 07–9660. WINROD *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 07–9669. SAINTILUS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 262 Fed. Appx. 337.

No. 07–9671. CROSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 623.

No. 07–9672. CHAVEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 821.

No. 07–9675. WILLEN *v.* DENNY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 07–9681. BLAZEVICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 Fed. Appx. 597.

No. 07–9683. SCIBLE *v.* FOX, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 07–9684. SNIPE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 554.

No. 07–9686. BOGER *v.* BRAXTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 337.

No. 07–9687. BROWN *v.* COMMISSIONER OF INTERNAL REVENUE ET AL. C. A. 4th Cir. Certiorari denied.

No. 07–9691. CERDA *v.* DEPARTMENT OF LABOR. C. A. Fed. Cir. Certiorari denied. Reported below: 257 Fed. Appx. 306.

No. 07–9695. O'BRIEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 52.

No. 07–9696. NNAJI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 72.

No. 07–9702. ARANGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 508 F. 3d 34.

No. 07–9703. BASKERVILLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 280.

No. 07–9707. ROLLOCK *v.* STINE, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–9710. TETREAULT ET VIR *v.* HOUGHTON ET AL.; and TETREAULT ET VIR *v.* WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES. Sup. Ct. Wash. Certiorari denied.

No. 07–9729. MURRAY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9730. MERRITT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 07–9731. PEREZ-CANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 728.

No. 07–9732. PARKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 790.

No. 07–9733. CEBALLOS-MAESE, AKA SALCIDO *v.* UNITED STATES (Reported below: 256 Fed. Appx. 742); ESPARZA-ORNELAS, AKA ESPARZA-GONZALEZ *v.* UNITED STATES (255 Fed. Appx. 937); GALVAN-SILVA *v.* UNITED STATES; NAJAR-URBINA *v.* UNITED STATES (256 Fed. Appx. 741); PEREZ-CHAIREZ *v.* UNITED STATES (256 Fed. Appx. 741); RODRIGUEZ CAMACHO *v.* UNITED STATES (256 Fed. Appx. 704); and RODRIGUEZ-JIMENEZ *v.* UNITED STATES (246 Fed. Appx. 739). C. A. 5th Cir. Certiorari denied.

No. 07–9735. CHANDLER *v.* DAUBERMAN ET AL. C. A. 4th Cir. Certiorari denied.

No. 07–9739. ORGAZ-VEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 961.

No. 07–9740. RODRIGUEZ-ZAVALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 738.

No. 07–9742. BARRERA DE ZACARIAS *v.* UNITED STATES (Reported below: 256 Fed. Appx. 697); CALDERON-GARCIA, AKA SANCHEZ-PONCHO *v.* UNITED STATES (256 Fed. Appx. 733); CRUZ-CONTRERAS, AKA CONTRERAS-CRUZ *v.* UNITED STATES (256 Fed. Appx. 734); DE LA RIVA-DE LA TORRE *v.* UNITED STATES (257 Fed. Appx. 725); ESPINOZA-CONTRERAS *v.* UNITED STATES (256 Fed. Appx. 700); FABILA-HERNANDEZ *v.* UNITED STATES (256 Fed. Appx. 731); HENRIQUEZ *v.* UNITED STATES (256 Fed. Appx. 696); HERNANDEZ-SERRANO, AKA HERNANDEZ *v.* UNITED STATES

(256 Fed. Appx. 702); JUAREZ-TRUJILLO *v.* UNITED STATES (256 Fed. Appx. 744); MORA-RIVAS, AKA SANDOVAL-MARTINEZ *v.* UNITED STATES (255 Fed. Appx. 934); NAJERA-DIAZ *v.* UNITED STATES (256 Fed. Appx. 743); PENALOZA-TREJO, AKA PENALOSA-TREJO *v.* UNITED STATES (256 Fed. Appx. 740); PEREZ-OCHOA, AKA FLORES-GARCIA *v.* UNITED STATES (256 Fed. Appx. 744); RAMIREZ-ROSALES *v.* UNITED STATES (255 Fed. Appx. 933); RAYMUNDO-BAUTISTA *v.* UNITED STATES (256 Fed. Appx. 703); RODARTE-FLORES *v.* UNITED STATES (255 Fed. Appx. 935); SALINAS-ARMENDARIZ *v.* UNITED STATES (255 Fed. Appx. 932); SAUCEDO-ESPINOZA *v.* UNITED STATES (256 Fed. Appx. 732); and TERRAZAS-MARTINEZ, AKA TERRAZAS *v.* UNITED STATES (256 Fed. Appx. 742). C. A. 5th Cir. Certiorari denied.

No. 07–9745. SOTO-RODRIGUEZ *v.* UNITED STATES (Reported below: 256 Fed. Appx. 731); TRISTE-JIMENEZ *v.* UNITED STATES (256 Fed. Appx. 705); TORRES-CASTANEDA *v.* UNITED STATES (255 Fed. Appx. 936); VALENZUELA-MORALES, AKA VALENZUELA-JIMENEZ *v.* UNITED STATES (256 Fed. Appx. 698); VILLARREAL-MARTINEZ *v.* UNITED STATES (255 Fed. Appx. 934); and ZUNIGA-CAZARES, AKA CAZARES-ZUNIGA *v.* UNITED STATES (255 Fed. Appx. 931). C. A. 5th Cir. Certiorari denied.

No. 07–9746. MARTINEZ-ALMAGUER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 622.

No. 07–9748. ESPARZA PIZANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 733.

No. 07–9750. MARTINEZ PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 720.

No. 07–9751. ANDRADE-CASTANEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 731.

No. 07–9752. ALBA-BAHENA *v.* UNITED STATES (Reported below: 256 Fed. Appx. 701); HEREDIA-GARCIA, AKA HERRIGON GARCIA *v.* UNITED STATES (256 Fed. Appx. 739); and MARTINEZ-RIOS, AKA MOSCASO-GUADERRAMA *v.* UNITED STATES (255 Fed. Appx. 930). C. A. 5th Cir. Certiorari denied.

No. 07–9753. MANZANARES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 931.

No. 07–9754. MCDADE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 324.

No. 07–9759. SAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 955.

No. 07–9762. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 801.

No. 07–9768. LEE-CLARK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 208.

No. 07–9772. WHITE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 257 Fed. Appx. 382.

No. 07–9773. WILSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–9783. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 982.

No. 07–9785. SIMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 164.

No. 07–9786. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 510 F. 3d 603.

No. 07–9787. SANCHEZ DUBOSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 279.

No. 07–9788. CRISCIONE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 977.

No. 07–9790. MARACALIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9803. GRAHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 22.

No. 07–9805. DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 30.

No. 07–9809. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 07–9812. WEEMS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–9813. WASHINGTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–9817. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 798.

No. 07–9818. MUHAMMAD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–9820. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 257 Fed. Appx. 598.

No. 07–9821. SANCHEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 507 F. 3d 826.

No. 07–9822. RUSTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9827. BEASLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 648.

No. 07–9828. OLIVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 807.

No. 07–9829. VEGA-COLON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–9831. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9835. CHISOM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 406.

No. 07–9836. DUNGY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–9839. TERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–9840. WARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 835.

No. 07–9841. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 674.

No. 07–9843. LENNINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 795.

No. 07–9844. KOUBRITI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 509 F. 3d 746.

No. 07–9845. LYONS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 510 F. 3d 1225.

No. 07–9846. RODRIGUEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 664.

No. 07–9848. OLEA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 130.

No. 07–9857. TREVINO *v.* UNITED STATES (Reported below: 262 Fed. Appx. 682); OVERSHOWN *v.* UNITED STATES (256 Fed. Appx. 723); and BROOKS *v.* UNITED STATES (256 Fed. Appx. 727). C. A. 5th Cir. Certiorari denied.

No. 07–9859. RUIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9860. SAGET *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 07–9861. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 901.

No. 07–9863. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 658.

No. 07–9865. PEREZ-CHAVEZ *v.* UNITED STATES (Reported below: 259 Fed. Appx. 649); and ROSALES-MARTINEZ *v.* UNITED STATES (259 Fed. Appx. 633). C. A. 5th Cir. Certiorari denied.

No. 07–9867. PERKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 688.

No. 07–9869. NELSON, AKA WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 245 Fed. Appx. 676.

No. 07–9870. MCCOMB *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 519 F. 3d 1049.

No. 07–9871. KELLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 510 F. 3d 433.

No. 07–9873. JENNINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 540.

No. 07–9874. TUCKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 07–9875. CALDERA-LASTRA *v.* UNITED STATES (Reported below: 258 Fed. Appx. 668); GARCIA-MEJIA *v.* UNITED STATES (259 Fed. Appx. 635); MEDRANO-FLORES *v.* UNITED STATES (259 Fed. Appx. 636); PADILLA-CASTANON *v.* UNITED STATES (259 Fed. Appx. 635); RAMOS-RUELAS *v.* UNITED STATES (259 Fed. Appx. 633); RODRIGUEZ-ZAVALA *v.* UNITED STATES (257 Fed. Appx. 827); and SUAREZ-PINEDA, AKA OLASCOAGA-MARTINEZ *v.* UNITED STATES (259 Fed. Appx. 631). C. A. 5th Cir. Certiorari denied.

No. 07–9877. REYNA-MORENO, AKA VEGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 823.

No. 07–9878. QUINN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 864.

No. 07–9881. SALCIDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 506 F. 3d 729.

No. 07–9884. CRESPIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 588.

No. 07–9888. BERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 533.

No. 07–9893. THROPAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–9895. TROIANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 983.

No. 07–9898. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 814.

No. 07–9899. SWARN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 376.

No. 07–9903. BURKE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–9908. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 505.

No. 07–9912. HURTADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 257 Fed. Appx. 402.

No. 07–9918. RUSSART *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 670.

No. 07–9919. SPEARMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 178.

No. 07–9923. MALDONADO-MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 662.

No. 07–9927. PAYTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 879.

No. 07–9928. NEWLAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 151.

No. 07–9933. BAILEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–9935. ALSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 616.

No. 07–9937. STIGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 508.

No. 07–9938. ZAMUDIO-OROZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 83.

No. 07–9939. GALVAN-PALOMINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 630.

No. 07–9940. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 962.

No. 07–9942. GOOCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 506 F. 3d 1156.

No. 07–9943. HAMILTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 510 F. 3d 1209.

No. 07–9945. NEAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–9953. MARSHALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 380.

No. 07–1052. QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION *v.* GARCIA. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 257 Fed. Appx. 717.

No. 07–1080. GREATER BIBLE WAY TEMPLE OF JACKSON *v.* CITY OF JACKSON, MICHIGAN, ET AL. Sup. Ct. Mich. Motion of Grace Community Church et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 478 Mich. 373, 733 N. W. 2d 734.

No. 07–1086. JACKSON *v.* UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF NEW JERSEY, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

Rehearing Denied

No. 07–706. MECCA ET AL. *v.* UNITED STATES, *ante*, p. 1181;

No. 07–728. SPADARO *v.* CITY OF RIALTO, CALIFORNIA, *ante*, p. 1224;

No. 07–759. LORIZ ET UX. *v.* CONNAUGHTON ET AL., *ante*, p. 1183;

No. 07–764. HATCH ET VIR *v.* HARPLEY, *ante*, p. 1183;

No. 07–771. PATEL *v.* MUKASEY, ATTORNEY GENERAL, *ante*, p. 1183;

No. 07–865. SWEENEY *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 1187;

No. 07–5214. BLACK *v.* UNITED STATES, *ante*, p. 1023;

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